

CITY OF ELWOOD, INDIANA

CODE OF ORDINANCES

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TITLE I: GENERAL PROVISIONS

Chapter

10. GENERAL PROVISIONS

CHAPTER 10: GENERAL PROVISIONS

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§ 10.01 TITLE OF CODE.

This codification of ordinances by and for the City of Elwood shall be designated as the Code of Elwood and may be so cited.

§ 10.02 INTERPRETATION.

Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition and application shall govern the interpretation of this code as those governing the interpretation of state law.

§ 10.03 APPLICATION TO FUTURE ORDINANCES.

All provisions of Title I compatible with future legislation, shall apply to ordinances hereafter adopted amending or supplementing this code unless otherwise specifically provided.

§ 10.04 CONSTRUCTION OF CODE.

(A) This code is a codification of previously existing laws, amendments thereto, and newly enacted laws. Any previously existing law or amendment thereto reenacted by this code shall continue in operation and effect, as if it had not been repealed by this code. All rules and regulations adopted under laws reenacted in this code shall remain in full force and effect unless repealed or amended subsequent to the enactment of this code.

(B) Any appropriation repealed and reenacted by this code is continued only for the period designated in the original enactment of that appropriation.

(C) The numerical order and position of sections in this code does not resolve a conflict between two or more sections.

(D) Any irreconcilable conflict between sections shall be resolved by reference to the dates that the sections were originally enacted. The section most recently enacted supersedes any conflicting section or subsection.

(E) All references within a section of this code to any section of previously existing laws refer to the numbers in the original enactment.

(F) All references within a section of this code to any section of previously existing law refer to the new code numbers assigned to that law.

(G) (1) The numerical designations and descriptive headings assigned to the various titles, chapters, subchapters or sections of this code, as originally enacted, or as added by amendment, are not law, and may be altered by the compilers of this or any subsequent codification, in any official publication, to more clearly indicate its content. These descriptive headings are for organizational purposes only, and do not affect the meaning, application, or construction of the law they precede.

(2) Each note following a section of this code is for reference purposes only, and is not a part of the section.

(H) All references to any section of this code refer to all subsequent amendments to that section, unless otherwise provided.

(I.C. 1-1-1-5)

§ 10.05 RULES OF INTERPRETATION; DEFINITIONS.

(A) *Rules of interpretation.* This code shall be construed by the following rules unless such construction is plainly repugnant to the legislative intent or context of the provision.

(1) Words and phrases shall be taken in their plain, ordinary and usual sense. Technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.

(2) Words imputing joint authority to three or more persons shall be construed as imputing authority to a majority of such persons, unless otherwise declared in the section giving such authority.

(3) Where a section requires an act to be done which, by law, an agent or deputy may perform in addition to the principal, the performance of the act by an authorized deputy or agent is valid.

(4) Words denoting the masculine gender shall be deemed to include the feminine and neuter genders; words in the singular shall include the plural, and words in the plural shall include the singular; the use of a verb in the present tense shall include the future, if applicable.

(5) References to any officer, such as “Clerk-Treasurer” or “Police Chief,” or similar designations shall be construed as if followed by the words “of the city.”

(B) *Definitions.* For the purpose of this code of ordinances, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CITY. The City of Elwood, Indiana.

HIGHWAY. Includes bridges, roads and streets, unless otherwise expressly provided. (I.C. 1-1-4-5)

MONTH. One calendar month. (I.C. 1-1-4-5)

POLICE DEPARTMENT. The Police Department of the city. (I.C. 1-1-4-5)

PRECEDING and **FOLLOWING.** When referring to sections or divisions in this code, refer to the sections or divisions next following or next preceding that in which the words occur, unless some other section is designated. (I.C. 1-1-4-5)

WRITTEN and **IN WRITING.** Include printing, lithographing or other modes of representing words and letters. Where the written signature of a person is required, the terms mean the proper handwriting of the person, or the person’s mark. (I.C. 1-1-4-5)

YEAR. One calendar year, unless otherwise expressly provided. (I.C. 1-1-4-5)

§ 10.06 SEVERABILITY.

(A) If any section of this code now enacted or subsequently amended or its application to any person or circumstances is held invalid, the invalidity does not affect other sections that can be given effect without the invalid section or application.

(B) Except in the case of a section or amendment to this code containing a non-severability provision, each division or part of every section is severable. If any portion or application of a section is held invalid, the invalidity does not affect the remainder of the section unless:

(1) The remainder is so essentially and inseparably connected with and so dependent upon the invalid provision or application that it cannot be presumed that the remainder would have been enacted without the invalid provision or application; or

(2) The remainder is incomplete and incapable of being executed in accordance with the legislative intent without the invalid provision or application.

(C) This section applies to every section of this code regardless of whether a section was enacted before or after the passage of this code.

(D) The repeal of a statute stating that the provisions of an act are severable as provided in division (B) of this section does not affect the operation of division (B) with respect to that act.

(I.C. 1-1-1-8)

§ 10.07 REFERENCE TO OTHER SECTIONS.

Whenever in one section, reference is made to another section hereof, such reference shall extend and apply to the section referred to as subsequently amended, revised, recodified, or renumbered unless the subject matter is changed or materially altered by the amendment or revision.

§ 10.08 REFERENCE TO OFFICES; NAME DESIGNATIONS.

(A) *Reference to offices.* Reference to a public office or officer shall be deemed to apply to any office, officer, or employee of this municipality exercising the powers, duties, or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

(B) *Name designations.* Whenever any ordinance or resolution of the Council refers to any board, bureau, commission, division, department, officer, agency, authority, or instrumentality of any government, and that name designation is incorrectly stated; or at the time of the effective date of that

ordinance or subsequent thereto, the rights, powers, duties, or liabilities placed with that entity are or were transferred to a different entity; then such named board, bureau, commission, department, division, officer, agency, authority or instrumentality, whether correctly named in the ordinance at its effective date or not, means that correctly named entity, or the entity to which such duties, liabilities, powers, and rights were transferred. (I.C. 1-1-6-1)

§ 10.09 ERRORS AND OMISSIONS.

If a manifest error is discovered, consisting of the misspelling of any words; the omission of any word or words necessary to express the intention of the provisions affected; the use of a word or words to which no meaning can be attached; or the use of a word or words when another word or words was clearly intended to express such intent, such spelling shall be corrected and such word or words supplied, omitted, or substituted as will conform with the manifest intention, and the provisions shall have the same effect as though the correct words were contained in the text as originally published. No alteration shall be made or permitted if any question exists regarding the nature or extent of such error.

§ 10.10 REASONABLE TIME.

(A) In all cases where an ordinance requires an act to be done in a reasonable time or requires reasonable notice to be given, reasonable time or notice shall be deemed to mean the time which is necessary for a prompt performance of such act or the giving of such notice.

(B) The time within which an act is to be done, as herein provided, shall be computed by excluding the first day and including the last. If the last day be Sunday, it shall be excluded.

§ 10.11 REPEAL OR MODIFICATION OF CODE SECTION.

When a section of this code is repealed which repealed a former section or law adopted prior to the enactment of this code, the former section or law is not revived unless it so expressly provides. The repeal of any section shall not extinguish or release any penalty, forfeiture, or liability incurred under such section, unless the repealing section so expressly provides. Such section shall be treated as still remaining in force for the purposes of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

(I.C. 1-1-5-1)

§ 10.12 LIMITATION PERIODS.

The running of any period of limitations or any requirement of notice contained in any law, whether applicable to civil causes or proceedings, or to the prosecution of offenses, or for the recovery of penalties and forfeitures, contained in a law repealed and reenacted by this code shall not be affected by the repeal and reenactment; but all suits, proceedings, and prosecutions for causes arising or acts committed prior to the effective date of this code may be commenced and prosecuted with the same effect as if this code had not been enacted.

Statutory reference:

Periods of limitation, see I.C. 1-1-1-7

§ 10.13 ORDINANCES UNAFFECTED.

All ordinances of a temporary or special nature and all other ordinances pertaining to subjects not embraced in this code shall remain in full force and effect unless herein repealed expressly or by necessary implication.

§ 10.14 ORDINANCES WHICH AMEND OR SUPPLEMENT CODE.

(A) If the legislative body shall desire to amend any existing chapter or section of this code, the chapter or section shall be specifically repealed and a new chapter or section, containing the desired amendment, substituted in its place.

(B) Any ordinance which is proposed to add to the existing code a new chapter or section shall indicate, with reference to the arrangement of this code, the proper number of such chapter or section. In addition to such indication thereof as may appear in the text of the proposed ordinance, a caption or title shall be shown in concise form above the ordinance.

§ 10.15 SECTION HISTORIES; STATUTORY REFERENCES.

(A) As histories for the code sections, the specific number and passage date of the original ordinance, and the most recent three amending ordinances, if any, are listed following the text of the code section. Example: (Ord. 10, passed 5-13-60; Am. Ord. 15, passed 1-1-70; Am. Ord. 20, passed 1-1-80; Am. Ord. 25, passed 1-1-85)

(B) (1) If a statutory cite is included in the history, this indicates that the text of the section reads substantially the same as the statute.

Example: (I.C. 36-5-2-2) (Ord. 10, passed 1-17-80; Am. Ord. 20, passed 1-1-85)

(2) If a statutory cite is set forth as a “statutory reference” following the text of the section, this indicates that the reader should refer to that statute for further information.

Example:

§ 39.01 PUBLIC RECORDS AVAILABLE.

This municipality shall make available to any person for inspection or copying all public records, unless otherwise exempted by state law.

Statutory reference:

For provisions concerning the inspection of public records, see I.C. 5-14-3-1 et seq.

§ 10.16 PRESERVATION OF PENALTIES, OFFENSES, RIGHTS AND LIABILITIES.

All offenses committed under laws in force prior to the effective date of this code shall be prosecuted and remain punishable as provided by those laws. This code does not affect any rights or

liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this code. The liabilities, proceedings and rights are continued; punishments, penalties, or forfeitures shall be enforced and imposed as if this code had not been enacted. In particular, any agreement granting permission to utilize highway right-of-ways, contracts entered into or franchises granted, the acceptance, establishment or vacation of any highway, and the election of corporate officers shall remain valid in all respects, as if this code had not been enacted.

§ 10.99 GENERAL PENALTY.

Any person, firm, or corporation who violates any provision of this code for which another penalty is not specifically provided shall, upon conviction, be subject to a fine not exceeding \$2,500. A separate offense shall be deemed committed upon each day during which a violation occurs or continues.

Statutory reference:

Power to prescribe fines up to \$2,500 granted, see I.C. 36-1-3-8(a)(10)

TITLE III: ADMINISTRATION

Chapter

30. GOVERNMENTAL ORGANIZATION

31. CITY OFFICIALS

32. COMMON COUNCIL

**33. AUTHORITIES, BOARDS, COMMISSIONS AND
DEPARTMENTS**

34. CITY COURT

35. FINANCE, TAXATION AND FUNDS

**36. PERSONNEL
APPENDIX: DRUG/ALCOHOL TEST CONSENT FORM**

37. CITY POLICIES

CHAPTER 30: GOVERNMENTAL ORGANIZATION

Section

30.01 Five branches of government established

§ 30.01 FIVE BRANCHES OF GOVERNMENT ESTABLISHED.

The government of the city shall consist of five branches, those being:

(A) Executive; (I.C. 36-4-5)

(B) Legislative; (I.C. 36-4-6)

(C) Fiscal; (I.C. 36-4-10)

(D) Judicial; and

(E) Statutory boards and commissions.

('66 Code, § 2-1-2-1) (Ord. 1571, passed 8-1-83)

CHAPTER 31: CITY OFFICIALS

Section

- 31.01 Elective officers
- 31.02 Mayor
- 31.03 Clerk-Treasurer
- 31.04 Compensation
- 31.05 Travel expense reimbursement

§ 31.01 ELECTIVE OFFICERS.

(A) The elective officers of the city shall be:

- (1) Mayor;
- (2) Clerk-Treasurer;
- (3) Common Council members; and
- (4) Judge.

(B) Officers shall be elected in accordance with the provisions of the state election law. ('66 Code, § 2-1-1-1)

(C) The executive and administrative authority of the city shall be vested in the Mayor, Clerk-Treasurer and the departments as are provided by law, and in other officers as may be appointed by virtue of state law. The Common Council may, by ordinance, provide that committees of the Council shall exercise executive functions, subject to the discretion of the Council, when not in conflict with state law. ('66 Code, § 2-1-1-2)
(Ord. 1172, passed 10-3-66)

§ 31.02 MAYOR.

The Mayor is the city executive officer and head of the executive branch. He or she shall faithfully perform the duties and responsibilities contained in I.C. 36-4-5 and other statutes of the state. ('66 Code, § 2-1-1-2) (Ord. 1571, passed 8-1-83)

§ 31.03 CLERK-TREASURER.

(A) The Clerk-Treasurer shall perform all duties now provided by law for the office; provided that, the County Treasurer shall collect all civil and school taxes and make settlement for the same. (Ord. 1172, passed 10-3-66)

(B) The Clerk-Treasurer is the fiscal officer of the city and the head of the fiscal branch. He or she shall perform the duties assigned by I.C. 36-4-10 and other duties as the Common Council may, by ordinance, require.

(C) The Clerk-Treasurer is hereby authorized, pursuant to I.C. 36-4-11-4, to appoint one Deputy Clerk-Treasurer to be paid from funds appropriated for the office of the Clerk-Treasurer and in the further discretion of the Common Council, from city utility funds. The deputy shall work under the exclusive direction of the Clerk-Treasurer and serve at the pleasure of the Clerk-Treasurer.

(D) The Clerk-Treasurer shall furnish space within his or her office for the administration and records of the city's utilities. The various utility clerks needed to manage the bookkeeping and administrative requirements of the utilities shall be appointed and compensated by the board having control of the utility the clerk serves. The utility clerks serve at the pleasure of the board which appointed them. The Clerk-Treasurer shall be compensated for services he or she renders to the city's utilities, and shall have the power to supervise the utility personnel in his or her office, subject to the approval of the governing boards of the various utilities.

('66 Code, § 2-1-1-3) (Ord. 1571, passed 8-1-83; Am. Ord. 1585, passed 4-2-84)

§ 31.04 COMPENSATION.

(A) The annual salaries of the Mayor, the Clerk-Treasurer, City Judge and each member of the Common Council shall be payable from the General Fund of the city. ('66 Code, § 2-6-1-1)

(B) The Mayor, Clerk-Treasurer, Deputy Clerk-Treasurer, City Engineer and City Attorney shall each receive from the funds of the sewage disposal plant and waterworks, payable in equal portions from each plant, unless otherwise duly ordered by the Board of Public Works and Safety, in which event the proportions fixed by the Board shall be controlling. The amount of compensation shall be as time to time determined by the Common Council. The compensation shall be in addition to the annual salary otherwise provided. ('66 Code, § 2-6-1-2) (Am. Ord. 1585, passed 4-2-84)

(Ord. 1172, passed 10-3-66)

§ 31.05 TRAVEL EXPENSE REIMBURSEMENT.

Beginning January 1, 2006, necessary travel shall be paid by the Clerk-Treasurer of the city upon properly submitted claims for travel at the rate of \$.40 per mile and there shall not be additional reimbursement for parking fees over and above the mileage allowance.

('66 Code, § 2-6-1-4) (Ord. 1546, passed - -82; Am. Ord. 1546, passed 4-4-94; Am. Ord. 2033, passed 12-5-05)

CHAPTER 32: COMMON COUNCIL

Section

General Provisions

- 32.01 Authority of Council
- 32.02 Membership
- 32.03 Clerk of Council
- 32.04 Meetings
- 32.05 Ordinances and resolutions
- 32.06 Decisions of presiding officer
- 32.07 Abstention

GENERAL PROVISIONS

32.01 AUTHORITY OF COUNCIL.

The legislative branch of the city is the Common Council. The Council shall have exclusive authority to adopt ordinances and appropriate tax monies received by the city, and to perform other necessary and desirable legislative functions.

('66 Code, § 2-2-1-1) (Ord. 1571, passed 8-1-83)

§ 32.02 MEMBERSHIP.

The Council shall be composed of seven members, five of whom are elected from districts and two of whom are elected at large. The districts are located in the county as follows:

- (A) Councilman District One shall be composed of Precincts 1 and 2 of Pipe Creek Township.
- (B) Councilman District Two shall be composed of Precincts 3 and 4 of Pipe Creek Township.
- (C) Councilman District Three shall be composed of Precincts 5 and 6 of Pipe Creek Township.
- (D) Councilman District Four shall be composed of Precincts 7 and 8 of Pipe Creek Township.

(E) Councilman District Five shall be composed of Precincts 9 and 10 of Pipe Creek Township.

(F) Councilman at large districts shall consist of the entire city.

(G) Redistricting of councilman districts shall be done at least every ten years after 1982 in accordance with I.C. 36-4-6-4.

('66 Code, § 2-2-1-3) (Ord. 1571, passed 8-1-83)

§ 32.03 CLERK OF COUNCIL.

The Clerk-Treasurer shall be the Council Clerk and shall perform the duties prescribed by I.C. 36-4-6-9 and others as the Council may direct.

('66 Code, § 2-2-1-2) (Ord. 1571, passed 8-1-83)

§ 32.04 MEETINGS.

(A) The regular meeting date and time for the Council shall be at 7:00 p.m., on the first Monday of each month, unless otherwise specified.

(B) The Mayor, or in his or her absence, the President of the Council, may be the presiding officer pursuant to I.C. 36-4-6-8, and meetings shall be conducted pursuant to the applicable statutes, including I.C. 36-4-6-10 through 17, and in accordance with the following rules:

(1) *Order of business.* The order of business to be followed at a meeting of the Council shall be as follows:

- (a) Calling to order;
- (b) Roll call by Clerk-Treasurer;
- (c) Reading of minutes and approval;
- (d) Petitions or comments of citizens;
- (e) Reports from committees, boards and commissions;
- (f) Unfinished business, including ordinances or resolutions already introduced;
- (g) New business, including introduction of ordinances and resolutions;
- (h) Miscellaneous business, including any matters not already considered;
- (i) Adjournment.

(2) *Contempt and disorder in the Council room.* No person shall use violent or contemptuous language, behave in a disorderly manner or refuse to obey the orders of the presiding officer in the Council room while the Council is in session. The presiding officer may order the removal from the Council room of anyone who intentionally disturbs the decorum of a Council meeting.

(C) Either the Mayor, the President of the Council, or a majority of Council Members may call a special meeting of the Council at a time so indicated in the Council Chambers, unless the meeting place is otherwise unanimously agreed upon elsewhere in the City of Elwood.
(‘66 Code, § 2-2-1-2) (Ord. 1571, passed 8-1-83; Am. Ord. 2177, passed 9-18-13)

§ 32.05 ORDINANCES AND RESOLUTIONS.

(A) Unless state statutes, regulations, or political subdivisions or boards which have jurisdiction over various functions of the Common Council require certain actions of the Council be completed on or before a specific date, all proposed ordinances shall be filed with the Clerk-Treasurer at least five days before a regular meeting.

(B) A majority vote of the elected members of the legislative body is required to pass an ordinance, unless a greater vote is require by statute, as per I.C. 36-4-6-11 and 36-4-6-12.

(C) Unless otherwise specifically required by statute, an ordinance or resolution may be passed upon one reading. A 2/3 vote of all elected members, after unanimous consent of members present to consider the ordinance or resolution, is required to pass an ordinance or resolution on the same day or at the same meeting at which it is introduced. The above requirement does not apply to a zoning ordinance or amendment to a zoning ordinance pursuant to state statute.

(D) Resolutions shall be subject to the same rule in method of introduction and adoption as ordinances.

(E) The passage or adoption of any ordinance or resolution, the yeas and nays, shall be taken and entered in the record, and the ordinances shall be processed in accordance with I.C. 36-4-6-14 through 36-4-6-17.
(Ord. 1949, passed 4-5-10; Am. Ord. 2131, passed 1-16-12; Am. Ord. 2166, passed 12-3-12)

§ 32.06 DECISIONS OF PRESIDING OFFICER.

(A) *Questions of order.* The presiding officer shall decide all questions of order. He or she shall decide whether any question submitted to the Council for adoption or rejection is decided in the affirmative or negative.

(B) *Appeal from decision of presiding officer.* From any decision of the presiding officer any member may appeal to the Council. The appeal shall be by motion duly made and seconded. A majority vote as defined in I.C. 36-4-6-11 is necessary to overrule the chair.

(C) *Suspension of rules.* The order of business may be suspended by the presiding officer. ('66 Code, § 2-2-1-2) (Ord. 1571, passed 8-1-83)

§ 32.07 ABSTENTION.

An abstention shall be treated as a neutral vote.
(‘66 Code, § 2-2-1-2) (Ord. 1571, passed 8-1-83)

CHAPTER 33: AUTHORITIES, BOARDS, COMMISSIONS AND DEPARTMENTS

Section

- 33.01 Department heads
- 33.02 Board of Public Works and Safety
- 33.03 Board of Zoning Appeals
- 33.04 Department of Law
- 33.05 Department of Planning and Economic Development
- 33.06 Housing Authority
- 33.07 Park and Recreation Board
- 33.08 Plan Commission
- 33.09 Fire Fighter's Pension Board of Trustees
- 33.10 Police Pension Board of Trustees
- 33.11 Police Reserve Division; supplemental rules, regulations and bylaws
- 33.12 Waterworks Department
- 33.13 Department of Redevelopment; Redevelopment Commission

Cross-reference:

Board of Works Purchasing Agency established, see § 35.30

§ 33.01 DEPARTMENT HEADS.

(A) (1) The members of the Board of Public Works and Safety are the Mayor and either two or four voters of the city who shall be chosen by the Mayor and who shall serve at his or her pleasure. The determination of whether the Board of Public Works and Safety will be a three or five person board shall be solely at discretion of the Mayor pursuant to I.C. § 36-4-9-8(c). The Elwood Police Chief, the Elwood Fire Chief and the heads of the Law, Sewage and Waterworks, and Street and Sanitation Departments are appointed by the Mayor and shall serve at his or her pleasure, pursuant to I.C. § 36-4-9-2.

(2) Pursuant to I.C. 36-4-9-2, the Mayor shall appoint the heads of the departments of Waterworks, Parks and Recreation and Planning and Development with the approval of the statutory board or commission operating the department. Appointees serve at the pleasure of the Mayor. ('66 Code, § 2-3-8-1)

(B) Subject to the appropriation power of the Common Council, the above-referenced departments shall have the ability to hire employees and purchase or contract for the materials or services, as the Board of Public Works and Safety or other governing board or commission deems necessary to perform their public functions. ('66 Code, § 2-3-8-2)
(Ord. 1571, passed 8-1-83; Am. Ord. 2241, passed 1-4-16)

§ 33.02 BOARD OF PUBLIC WORKS AND SAFETY.

There is established a Board of Public Works and Safety. The Board shall be the chief administrative body of the city and shall have control of the day-to-day operations of the following executive departments now established:

- (A) Police Department;
- (B) Fire Department;
- (C) Utilities Department, consisting of:
 - (1) The Sewerage Collection and Disposal System; and
 - (2) Water Generation and Distribution System.
- (D) Street and Sanitation Department.

('66 Code, § 2-4-1-1) (Ord. 1571, passed 8-1-83)

Cross-reference:

Authority of Board to allow and approve claims, see § 35.03

Board to comply with certain purchasing procedures, see § 35.33

§ 33.03 BOARD OF ZONING APPEALS.

There is established a Board of Zoning Appeals, pursuant to I.C. 36-7-4-900 and other statutes concerning a board.

('66 Code, § 2-4-3-1) (Ord. 1172, passed 10-3-66)

Cross-reference:

Board of Zoning Appeals; powers and duties, see § 152.71

Zoning, see Chapter 152

§ 33.04 DEPARTMENT OF LAW.

There is a Department of Law established pursuant to I.C. 36-4-9-12.

('66 Code, § 2-3-7-1) (Ord. 1571, passed 8-1-83)

§ 33.05 DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT.

There is established a Department of Planning and Economic Development. The Department shall consist of two divisions:

- (A) Planning Division, organized pursuant to I.C. 36-7; and

(B) Economic Development Commission, organized pursuant to I.C. 36-7. ('66 Code, § 2-3-6-1) (Ord. 1571, passed 8-1-83)

§ 33.06 HOUSING AUTHORITY.

(A) Pursuant to the *Housing Authorities Act*, as amended, the Council finds that:

(1) Unsanitary and unsafe inhabited dwelling accommodations exist in the city.

(2) There is a shortage of safe and sanitary dwelling accommodations in the city available to persons of low income at rentals they can afford.

(3) There is need for a housing authority to function in the city.

('66 Code, § 2-5-4-1)

(B) The name of the housing authority shall be "Housing Authority of the City." ('66 Code, § 2-5-4-2)

(I.C. 36-7-18-1) (Ord. 1430, passed - -77)

Cross-reference:

Building Regulations, see Chapter 150

§ 33.07 PARK AND RECREATION BOARD.

(A) Under the provisions of I.C. 36-10-3, there is hereby created an Elwood Department of Parks and Recreation.

(B) A board, designated the Elwood Park and Recreation Board, shall be created and composed of:

(1) Four members appointed by the Mayor on the basis of their interest in and knowledge of parks and recreation. No more than two members shall be of the same political party.

(2) One ex-officio member who is a member of and appointed by the Board of the Elwood Community School Corporation.

(3) One ex-officio member who is a member of and appointed by the Board of Trustees of the Elwood Public Library.

(4) The Board of Trustees of the Elwood Public Library and the Board of the Elwood Community School Corporation shall fill any vacancies of their ex-officio members. Ex-officio board members have all the rights of regular members, including, but not limited to, the right to vote.

(C) (1) Upon establishment of the Board, the terms of the Mayor's initial appointments to the Board shall be:

- (a) One member for a term of one year;
- (b) One member for a term of two years;
- (c) One member for a term of three years; and
- (d) One member for a term of four years.

(2) As a term expires, each new appointment shall be made by the Mayor for a term of four years. All terms expire on the first Monday in January, but a member shall continue in office until his successor is appointed. If an appointment for a new term is not made by the Mayor by the first Monday in April, the incumbent shall serve another term. If a vacancy occurs, the Mayor shall appoint a new member for the remainder of the unexpired term.

(D) At its first regular meeting in each year, the Board shall elect a president and vice-president. The vice-president shall have authority to act as the president of the Board during the absence or disability of the president. The Board may select a secretary either from within or without its own membership.

(E) The Board shall have the power to perform all acts necessary to acquire and develop sites and facilities and to conduct the programs as are generally understood to be park and recreation functions. In addition, the Board shall have all the powers and duties listed in I.C. 36-10-3.

(F) The Board shall prepare and submit an annual budget in the same manner as other departments of city government as prescribed by the State Board of Accounts. The Board may accept gifts, donations and subsidies for park and recreation purposes.

('66 Code, § 2-3-5-1) (Ord. 1571, passed 8-1-83; Am. Ord. 1660, passed 2-2-86)

Cross-reference:

Parks, see Chapter 95

§ 33.08 PLAN COMMISSION.

There is established a City Plan Commission pursuant to I.C. 36-7-4-300 and other statutes concerning such a commission.

('66 Code, § 2-4-2-1) (Ord. 1172, passed 10-3-66)

Cross-reference:

Permits; procedure and requirements, see § 152.72

Plan Commission; duties and membership, see § 152.70

§ 33.09 FIRE FIGHTERS' PENSION BOARD OF TRUSTEES.

There shall be a Fire Fighters' Pension Board of Trustees to perform certain duties prescribed by statutes concerning the statutory pensions of the city's fire fighters.

('66 Code, § 2-3-2-2) (Ord. 1571, passed 8-1-83)

Cross-reference:

Funeral benefits for police officers and fire fighters, see § 36.02

§ 33.10 POLICE PENSION BOARD OF TRUSTEES.

There shall be a Police Pension Board of Trustees to perform certain duties prescribed by statutes concerning the statutory pension of the city's police officers.

('66 Code, § 2-3-1-2) (Ord. 1571, passed 8-1-83)

Cross-reference:

Funeral benefits for police officers and fire fighters, see § 36.02

§ 33.11 POLICE RESERVE DIVISION; SUPPLEMENTAL RULES, REGULATIONS AND BY-LAWS.

(A) *Approval.* The supplemental rules and regulations of the Police Department Reserve Division and the bylaws below are hereby approved.

(B) *Suspension for violations.* Any member of the Elwood Police Department Reserve Division who violates any of the rules and regulations of the Elwood Police Department Reserve Division may be suspended by the Chief of the Police Department in his discretion, without benefit of notice or hearing.

(C) *Compliance to rules.* Each reserve officer shall comply to all rules and regulations of the Police Department and additionally, to all rules and regulations contained herein to insure the officer continues good standing with the Police Department and the Police Department Reserve Division.

(D) *Rules and regulations.* Each officer shall:

(1) Disregard internal rank when assisting a full-time officer;

(2) Never attempt to stop a vehicle using his or her personal vehicle. This is for officer safety as well as state statute;

(3) Notify the Reserve Division Secretary of any change of address, telephone number(s) or employment status;

(4) (a) Not have any police transmitter equipped in their personal vehicle or in their possession without written authorization by the Chief of Police. Authorization must be carried in the vehicle at all times;

(b) Hand held walkie talkie radios issued to the officer by the Police Department or another organization of private employment are exceptions.

(5) No reserve officer shall, at their expense, purchase any equipment bearing the insignia of the Elwood Police Department unless prior written approval is obtained from the Chief of Police. All purchases become the property of the Elwood Police Department. All uniform purchases shall be coordinated through the Chief of Police. Further, upon termination for any reason or retirement as a reserve officer, the reserve officer will immediately turn in all items issued by or bearing the insignia of the Police Department.

(6) In the event of a leave of absence, a reserve officer shall be required to attend all scheduled training courses or seminars during the leave or be subject to dismissal. It shall be the duty of the reserve officer to keep in contact with the Reserve Division Commander concerning these functions. Upon return from a leave of absence of three months or more, the reserve officer shall revert to the "shadow" portion of the field training officer training to determine if remedial training is required.

(7) All reserve officers shall be equally responsible for the upkeep of vehicles assigned to the Reserve Division or any vehicle used by a reserve officer. Each officer shall insure the vehicle interior is free of trash before going off duty and the vehicle has a full tank of gas. Any officer found to misuse any vehicle of the Elwood Police Department will be subject to disciplinary action.

(8) All reserve officers shall, in accordance to the Elwood Police Department policy, be evaluated in their performance every six months, beginning with their anniversary date. Evaluations shall be made by the officer's shift supervisor in conjunction with the Chief of Police.

(9) No reserve officer may be employed by another law enforcement agency, either gainfully or volunteer basis, requiring the use of police powers.

(10) No reserve officer may be employed as their sole means of support in any security or law enforcement function in which the police powers authorized by the Chief of Police are required.

(11) Each reserve officer shall submit to a pre-acceptance drug screening and shall submit to random drug screens as per the current drug policy for all employees of the city.

(12) In the event a reserve officer is arrested for an offense that would have precluded him or her from becoming a member of the Police Department Reserve Division originally, the Chief of Police may upon a reasonable belief that the officer committed the offense dispatch a full-time or reserve brass officer to that members place of residence to retrieve all identification cards, badges, uniforms and equipment belonging to the Police Department and immediately suspend the member from the Police Department Reserve Division. Upon final adjudication of the offense, if the former member is found to be not guilty, the member may apply to the Chief of Police for reinstatement.

(13) Reserve officers must be approved by the Board of Public Works and Safety at the recommendation of the Chief of Police and continue to serve at the pleasure of the Chief of Police.

(E) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DIVISION. Founded under the direction of the Chief of Police, the Police Department Reserve Division.

OFFICER, RESERVE OFFICER, MEMBER. When referred to in these by-laws, the terms shall be “Elwood Police Department Reserve officers.”

RESERVE BRASS. When referred to in these by-laws, the term shall include all reserve officers holding the internal rank of sergeant or above.

RULES AND REGULATIONS. When referred to in these by-laws, the terms shall include both the Elwood Police Department’s policy manual and Elwood Police Department Reserve Division supplemental rules and regulations.

(F) *Authority.* Pursuant to the authority granted to the Chief of Police by law, the following by-laws are hereby established for the operation of the Elwood Police Department Reserve Division.

(G) *Purpose and objectives.*

(1) The members of the Elwood Police Department Reserve Division are dedicated to support and assist the Elwood Police Department and the citizens of Elwood.

(2) The objectives of these by-laws are as follows:

- (a) To assist the Elwood Police Department and provide trained manpower;
- (b) To encourage more citizen understanding, cooperation and participation in city law enforcement;
- (c) To provide relief for the full-time officers when necessary;
- (d) To support any and all programs initiated by the Chief of Police;
- (e) To augment manpower when there is a shortage for any reason; and
- (f) To improve and support the way of life of the citizens of Elwood by supporting and assisting with their lawful activities.

(H) *Structure.*

(1) *Direction.* The Reserve Division comes under the direction of the Chief of Police.

(2) *Police function.* The Reserve Division is authorized up to ten officers assigned to shifts within the law enforcement division, special events or special assignments designated by the Chief of Police. Direct supervisory reporting for reserve officers is to the supervisor to which they are assigned by shift of function as road qualified officers. Non-road qualified and other general duty support officers will report to the Chief of Police or Shift Commander.

(3) *Division organization.* The Reserve Division structure consists of a Reserve Captain and a Reserve Lieutenant and up to eight reserve officers. Rank reflects position within the Reserve Division and provides a method to conduct and supervise the Division's operation and business activity. Rank will be used in a police function.

(4) *Secretary.* He or she shall be responsible for keeping the minutes of staff and division meetings and recording attendance at those meetings. Responsible for keeping records of the members of the Reserve Division and providing up-to-date information to those members.

(5) *Special Events Coordinator.* He or she will schedule, oversee and coordinate the duties and functions of special events, such as parades, bike patrol, other security or traffic functions.

(6) *Fleet Officer.* He or she will be responsible for all maintenance and general upkeep of the Reserve Division's vehicles, will oversee the cleaning of the vehicles with the help of the entire Division, will keep records of preventive and corrective maintenance and will submit all documentation to the Chief of Police. This function does not preclude individual reserve officers to ignore their duty to appropriately care for and maintain the vehicles of the Police Department.

(7) *Training Coordinator.* He or she will be responsible for coordinating, with the Department's Training Officer, all Department training for the Reserve Division. It will be this officer's responsibility to notify all reserve officers of scheduled training.

(8) *Statistician.* He or she will be responsible for maintaining records of time worked by reserve officers and statistics of work quantity and quality.

(I) *Trainee status.*

(1) *Trainee designation; attendance.* Once accepted by the Reserve Division, each candidate is designated as a trainee and must attend training as follows.

(a) *Pre-training seminar.* A 48-hour minimum training on radio dispatching, Police Department rules and regulations and procedure.

(b) *Training academy.* Each trainee without prior law enforcement experience and training must attend and successfully complete an approved reserve training academy (pre-basic course).

(c) *Review of skills.* Trainees with prior law enforcement experience and formal academy training must have their skills and formal training reviewed and approved by the Chief of Police and be in compliance with state law and Elwood Police Department requirements.

(d) *Qualification.* Trainees must qualify and show proficiency with the designated duty firearm of the Police Department.

(2) *Probationary status.*

(a) Upon satisfactory completion of all training requirements, each trainee officer shall be sworn in as a Elwood Police Department reserve police officer. During the probationary period (usually one year), each officer will be placed in the field training/officer training program and is expected to complete the field training officer program within the probationary period.

(b) The field training program consists of the probationary officer working with an assigned full-time police officer. A probationary officer will be expected to observe officers in their daily duties, and gradually take on duties with the full-time officer as instructor in each case handled. As the probationary officer gains knowledge and confidence, he or she will take on more responsibility.

(c) Failure to satisfactorily complete the field training program during the probationary period will result in the officers dismissal from the Police Department Reserve Division without cause.

(d) During the probationary period, the reserve officer in field training officer status is restricted and must work under the direction of his or her field training officer or full-time senior road qualified officer. The reserve officer in field training officer status will not work any paid detail. Any arrest must be made in the presence of a field training officer or full-time senior road qualified officer.

(3) *Road qualified status.* Upon successful completion of the field training program, the officer will be designated as a road qualified officer (even though he or she may still be on probation for the remainder of the probationary period).

(J) *Duties.* As members of the Elwood Police Department Reserve Division, each officer must:

(1) Conform to the monthly duty schedule as outlined by the Chief of Police.

(2) Satisfactorily complete all firearms qualifications conducted by the Elwood Police Department approved instructors. No firearm shall be carried unless qualified as required. Unless a personal protection permit has been acquired no reserve division officer will be permitted to carry a handgun unless on duty.

(3) A reserve division officer will have arrest powers only when working for the Police Department in full uniform. If the officer observes a felony or a misdemeanor in progress while off duty, they should notify proper authorities, then stand by to supply additional information and to assist if requested.

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(4) Participate in all required training programs designated by the Elwood Police Department.

(5) Perform a minimum of 240 hours of scheduled details each year with no more than 30 days between details unless on approved leave of absence. These details shall include the following:

- (a) Road patrol as assigned by the Chief of Police;
- (b) Special events authorized by the Chief of Police; and
- (c) Additional details as required by the Chief of Police.

(K) *Meetings.* Divisional meetings will be scheduled as needed by the Chief of Police on a consistent basis, usually monthly. Training will be scheduled during these meetings.

(L) *Resignation and retirement.*

(1) *Voluntary resignation.* A reserve officer may at his or her discretion resign from the Elwood Police Department Reserve Division by submitting a letter of resignation to the Chief of Police. Upon submitting the letter of resignation, the officer will contact the Chief of Police to arrange a convenient time to return all uniforms and equipment issued to the officer by the Elwood Police Department, including firearms, ammunition, badges and ID card.

(2) *Involuntary resignation.* A reserve officer will be terminated involuntarily for:

(a) Any violation of the general orders of the Elwood Police Department which the Chief of Police deems serious enough to warrant termination.

(b) Any violation of the supplemental rules and regulations of the Elwood Police Department Reserve Division which the Chief of Police deems serious enough to warrant termination.

(3) *Retirement.* A reserve officer in good standing may, at the discretion of the Chief of Police, retire. Retirees shall meet the following requirements:

- (a) The retiree shall have no less than ten years service to the Elwood Police Department.
- (b) The retiree must give his or her intentions in writing to the Chief of Police for review.
- (c) The retiree shall forfeit any rank and be removed from the roster.

(d) The provision of retirement is meant to be an alternative to quitting after a long period of service. It is not intended to be a way of retaining police powers.

- (e) Retirees shall meet all state requirements in respect to carrying firearms.

(f) The retiree acknowledges a legal separation from the Elwood Police Department because training and adherence to policy is no longer required.

(Ord. 1882, passed 10-7-96)

Cross-reference:

Drug and Alcohol Policy, see § 36.15 through 36.34

§ 33.12 WATERWORKS DEPARTMENT.

There is a Department of Waterworks organized, pursuant to I.C. 36-9. ('66 Code, § 2-3-3-1) (Ord. 1571, passed 8-1-83)

§ 33.13 DEPARTMENT OF REDEVELOPMENT; REDEVELOPMENT COMMISSION.

(A) There is hereby created the Department of Redevelopment of the city, which shall be entitled to exercise all the rights, powers, privileges and immunities accorded to such department by I.C. 36-7-14 (the "Act"), except those rights, powers, privileges and immunities which are limited as described in division (F) below.

(B) The Department of Redevelopment shall be under the control of a Board of five members to be known as the City of Elwood Redevelopment Commission.

(C) There is hereby created a Board to be known as the City of Elwood Redevelopment Commission. Three of the Commissioners shall be appointed by the Mayor, and two shall be appointed by the Common Council of the city. The nominations made by the Common Council shall be transmitted to the Mayor in writing within five days after the final passage of this section. Each Redevelopment Commissioner shall serve for one year from the first day of January after his or her appointment and until his or her successor is appointed and has qualified, except that the original Commissioners shall serve from the date of their appointment until the first day of January in the second year after their appointment. If a vacancy occurs, a successor shall be appointed in the same manner as the original Commissioner, and the successor shall serve for the remainder of the vacated term.

(1) Each Redevelopment Commissioner, before beginning his or her duties, shall take and subscribe an oath of office in the form prescribed by law, to be endorsed on the certificate of his or her appointment, which shall be promptly filed with the Clerk-Treasurer of the city.

(2) Each Redevelopment Commissioner, before beginning his or her duties, shall execute a bond payable to the state, with surety to be approved by the Mayor. The bond must be in a penal sum of \$15,000 and must be conditioned on the faithful performance of the duties of his or her office and the accounting for all monies and property that may come into his or her hands or under his or her control. Until the Redevelopment Department has an operational budget, the city shall pay the bond from available funds.

(D) The Commissioners shall have the qualifications prescribed by the laws of the state as from time to time amended and shall qualify as therein provided; and shall exercise and enjoy the rights and powers and assume the duties and obligations conferred and imposed by the Act, including but not limited to the following qualifications:

(1) A Redevelopment Commissioner must be at least 18 years of age and must be a resident of the city. If a Commissioner ceases to be qualified under this section, he or she forfeits his or her office.

(2) No Redevelopment Commissioner of the city shall receive a salary, but Redevelopment Commissioners are entitled to reimbursement for expenses necessarily incurred in the performance of their duties.

(3) A Redevelopment Commissioner may not have a pecuniary interest in any contract, employment, purchase or sale made under the provisions of this section and the Act. However, any property required for redevelopment purposes in which a Commissioner has a pecuniary interest may be acquired, but only by gift or condemnation. A transaction made in violation of this section is void.

(E) The Clerk-Treasurer of the city charged by law for the performance of duties in respect to the funds and accounts of the city, shall perform the same duties with respect to the funds and accounts of the Department of Redevelopment, except as otherwise provided for in the Act.

(F) Notwithstanding anything contained in this section or the Act to the contrary, the Department of Redevelopment and the Redevelopment Commission shall, before it (i) exercises its power of issuance of bonds under I.C. 36-7-14-25.1; (ii) enters into a lease or leases under I.C. 36-7-14-25.2; (iii) levies taxes under I.C. 36-7-14-27; (iv) borrows money under I.C. 36-7-14-27.5; (v) levies a tax rate for specific purposes under I.C. 36-7-14-28; (vi) exercises the power of eminent domain under I.C. 36-7-14-20; or (vii) establishes an allocation area under I.C. 36-7-14-39, obtain specific approval for any or all such actions from the Common Council of the city.

(Ord. 2129, passed 1-2-12)

CHAPTER 34: CITY COURT

Section

General Provisions

- 34.01 Continuation of City Court
- 34.02 City Judge
- 34.03 Funding
- 34.04 Failure to appear fee

Adult Probation Department

- 34.15 Department established
- 34.16 Adult Probation Services Fund

GENERAL PROVISIONS

§ 34.01 CONTINUATION OF CITY COURT.

The City Court is continued as a part of the city government.
(‘66 Code, § 2-8-2-1) (Ord. 1550, passed - -82)

§ 34.02 CITY JUDGE.

(A) There shall be the office of City Judge. Election for office shall be held, in accordance with the provisions of law now or hereafter in effect, for a term as provided by law, and the judge shall exercise the powers and duties of office as provided for under Chapter 129 of the Acts of the Indiana General Assembly of 1905, and as the law has been amended and supplemented. (‘66 Code, § 2-8-1-1) (Ord. 1172, passed 10-3-66)

(B) The City Judge must have been a resident of Elwood for five years. (‘66 Code, § 2-8-1-3) (Ord. 1303, passed - -71)

§ 34.03 FUNDING.

(A) It shall be the duties of the proper officers of the city to include in the annual budget of the city each and every year, for the following year, the amount of salary fixed by ordinance for City Judge, as by law now provided, and necessary expenses of the office. ('66 Code, § 2-8-1-2) (Ord. 1172, passed 10-3-66)

(B) The Council shall provide for the funding of City Court from time to time in its yearly budget. ('66 Code, § 2-8-2-2) (Ord. 1550, passed - -82)

§ 34.04 FAILURE TO APPEAR FEE.

(A) The Elwood City Court may impose a failure to appear fee in the amount of \$50 per separate cause of action in the event that a respondent/defendant shall fail to appear for any scheduled court appearance on an ordinance violation, infraction or misdemeanor filed in Elwood City Court.

(B) The failure to appear fee authorized in division (A) of this section shall be in addition to any and all other costs, fines and fees authorized and/or required under the laws or statutes of the state, the county and the city and shall be collected by the Court Clerk and transmitted to the Clerk-Treasurer of the city as a failure to appear fee (FTA fee) to be deposited in the General Fund of the city. (Ord. 1894, passed 7-10-97)

ADULT PROBATION DEPARTMENT**§ 34.15 DEPARTMENT ESTABLISHMENT.**

There is hereby created an Adult Probation Department, which shall be a part of the judicial branch of the city and shall report to the City Court Judge. (Ord. 1946, passed 4-3-00)

§ 34.16 ADULT PROBATION SERVICES FUND.

(A) There is hereby established an Adult Probation Services Fund within the judicial budget of the City of Elwood.

(B) All money collected by the City Clerk under the provision of I.C. 35-38-2-1 shall be deposited into the Adult Probation Services Fund.

(C) The expenditures from the fund shall be in accordance with the established claim procedures as provided by law and for those expenditures authorized by I.C. 35-38-2-1.

(D) Any fee collected and deposited to the Adult Probation Services Fund shall be maintained in the fund and shall revert to the fund only.

(Ord. 1946, passed 4-3-00)

Cross-reference:

Funds, see §§ 35.15 et seq.

CHAPTER 35: FINANCE, TAXATION AND FUNDS

Section

General Provisions

- 35.01 Budget for memberships
- 35.02 Attendance expenses
- 35.03 Authority of Board of Public Works and Safety to allow and approve claims
- 35.04 Claim payments in advance of Board allowance
- 35.05 Real and personal property tax abatement for economic revitalization areas
- 35.06 Bad debt and uncollectible accounts receivable write-off policies and procedures generally
- 35.07 Bad debt and uncollectible accounts receivable write-off policies and procedures for municipal water utility
- 35.08 Promotion of economic development and tourism
- 35.09 Policy on materiality and process for reporting material items

Funds

- 35.15 Cash Reserve Funds
- 35.16 Cumulative Capital Development Fund
- 35.17 Public Employees' Retirement Fund
- 35.18 Non-reverting special fund for the receipt and payment of retiree insurance premium funds
- 35.19 Humane Department Fund
- 35.20 Rainy Day Fund

Purchasing Procedures

- 35.30 Board of Works Purchasing Agency established
- 35.31 Powers and duties
- 35.32 Designation of purchasing agents
- 35.33 Purchasing regulations
- 35.34 Purchase of supplies manufactured in the United States

Fixed Asset Capitalization Policy

- 35.40 Definitions and provisions
- 35.41 Recording and accounting
- 35.42 Safeguarding of assets

Cross-reference:

Sewage Works Industrial Cost Recovery Fund, see § 52.089
Unsafe Building Fund, see § 150.52

GENERAL PROVISIONS**§ 35.01 BUDGET FOR MEMBERSHIPS.**

The Council is authorized to budget and appropriate funds from the General Fund or from other funds to provide membership for the city and the elected and appointed officials and members of the municipality's boards, councils, departments or agencies in local, regional, state and national associations of a civic, educational or governmental nature, which have as their purpose the betterment and improvement of municipal operations.

('66 Code, § 2-6-2-1) (Ord. 1551, passed 7-12-82)

§ 35.02 ATTENDANCE EXPENSES.

The Common Council is further authorized to budget and appropriate funds to pay the expenses of duly authorized representatives to attend the meetings and functions of organizations to which the municipality belongs.

('66 Code, § 2-6-2-2) (Ord. 1551, passed 7-12-82)

§ 35.03 AUTHORITY OF BOARD OF PUBLIC WORKS AND SAFETY TO ALLOW AND APPROVE CLAIMS.

The Board of Works and Public Safety of the city shall be, and hereby is, authorized to allow and approve claims against the city in accordance with I.C. 36-4-8-5, and any other statutes which currently, or in the future, relate to such claims.

(Ord. 1569, passed 5-9-83)

§ 35.04 CLAIM PAYMENTS IN ADVANCE OF BOARD ALLOWANCE.

(A) The City Fiscal Officer (Clerk-Treasurer) may make claim payments in advance of Board allowance for the following kinds of expenses as per the authority of I.C. 36-4-8-14:

- (1) Property or services purchased or leased from the United States government, its agencies or its political subdivisions;
- (2) License or permit fees;
- (3) Insurance premiums;
- (4) Utility payments or utility connection charges;
- (5) General grant programs where advance funding is not prohibited and the contracting party posts sufficient security to cover the amount advanced;
- (6) Grants of state funds authorized by statute;
- (7) Maintenance or service agreements;
- (8) Leases or rental agreements;
- (9) Bond or coupon payments;
- (10) Payroll; and
- (11) State, federal or county taxes.

(B) Each payment of expenses under this section shall be supported by a fully itemized claim.

(C) The Board of Public Works for the city having jurisdiction over the allowance of claims, shall review and allow the claims at its next regular or special meeting following the pre-approved payment of the expenses.

(Ord. 1779, passed 2-2-93)

§ 35.05 REAL AND PERSONAL PROPERTY TAX ABATEMENT FOR ECONOMIC REVITALIZATION AREAS.

(A) Substantive provisions of I.C. 6-1.1-12.1-1 *et seq.*, are hereby adopted and incorporated within this section as though the provisions were fully set forth herein in detail, it being the purpose and intent

hereof to offer to property owners within the city the maximum deductions from the assessed value of both real and personal property authorized and allowed pursuant to the foregoing Indiana enabling legislation.

(B) The entire area within the corporate limits of the city is an economic revitalization area within the meaning of Indiana Senate enrolled Act No. 86, Sections 5, 6, 7, 8 and 9, which amended I.C. 6-1.1-12.1-1 as amended.
(‘66 Code, § 3-4-1-1)

(C) It is the city’s purpose to encourage growth, redevelopment and rehabilitation and that the owner of property which is located in the economic revitalization area is entitled to a deduction from the assessed value of the property for a period as determined by the City Council if:

(1) The property has been rehabilitated; or

(2) The property is located on real estate which has been redeveloped.
(‘66 Code, § 3-4-1-2)

(D) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

PROPERTY. A building or structure, but does not include land.

REDEVELOPMENT. The construction of new structures on unimproved real estate or on real estate upon which a prior existing structure is demolished to allow for new construction.

REHABILITATION. The remodeling, repair or betterment of property in any manner or any enlargement of extension or property.
(‘66 Code, § 3-4-1-3)

(E) The amount of the deduction which the property owner is entitled to receive for a particular year shall be determined by the Common Council.

(F) A general assessment of real property which occurs within the applicable period does not affect the amount of the deduction.
(‘66 Code, § 3-4-1-4)

(G) To the extent permitted and authorized by I.C. 6-1.1-12.1-1 *et seq.*, the owners of new manufacturing equipment within the corporate limits of the city heretofore designated an “economic revitalization area” shall be entitled to a deduction from the assessed value of tangible personal property for a period of years as determined by the City Council.
(Ord. 1486, passed 7-30-79; Am. Ord. 1579, passed 10-18-83)

§ 35.06 BAD DEBT AND UNCOLLECTIBLE ACCOUNTS RECEIVABLE WRITE-OFF POLICIES AND PROCEDURES GENERALLY.

(A) In the event that accounts receivable under this section, as amended from time to time, are not paid within the time fixed by the City of Elwood (hereinafter “the city”) or a city agency or department, the same shall be deemed delinquent. A penalty of 10% of the amount of the accounts receivable may be attached as delinquent fees.

(B) As used herein, the term *UNCOLLECTIBLE ACCOUNT* shall have the following meaning: a delinquent accounts receivable for which the city or city agency or department has reasonably and diligently attempted collection, but in which such collection remains unsuccessful.

(C) The city or city agency or department shall prepare a semi-annual schedule of uncollectible accounts. The semi-annual schedule shall consist of accounts the city or city agency or department has determined to be uncollectible.

(D) The city or city agency or department shall generate a statement setting forth the efforts that have been made to collect the account and a statement that such efforts have been unsuccessful.

(E) The city or city agency or department shall produce a statement, including the reasons therefore, that the city or city agency or department believes it is not economically feasible to pursue collection efforts on the specified uncollectible account.

(F) A schedule of uncollectible accounts shall be submitted to the Board of Public Works for action by the City Council to declare the accounts listed as collectible or uncollectible and may authorize the city or city agency or department to cease further collection procedures and expense the amounts outstanding on the accounts declared uncollectible as bad debts.

(G) The city or city agency or department may attempt to recover the amount of the bad debt in a civil action against the debtor.

(H) Accounts in which state and/or federal law mandates an amount is to be written off shall be written off as bad debts upon the approval of the Clerk-Treasurer of the city.
(Ord. 2101, passed 10-6-10)

§ 35.07 BAD DEBT AND UNCOLLECTIBLE ACCOUNTS RECEIVABLE WRITE-OFF POLICIES AND PROCEDURES FOR MUNICIPAL WATER UTILITY.

(A) In the event that accounts receivable under this section, which includes water, sewer, and trash fees, as amended from time to time, are not paid within the time fixed by the City of Elwood Municipal (hereinafter “the utility”) the same shall be deemed delinquent. A penalty of 10% of the amount of the

accounts receivable may be attached as delinquent fees for sewer and sanitation fees. A penalty of 10% of the first \$3 and 3% of the remaining delinquent water fees will be assessed against delinquent water fees.

(B) As used herein, the term *UNCOLLECTIBLE ACCOUNT* shall have the following meaning: a delinquent accounts receivable for which the utility has reasonably and diligently attempted collection, but in which such collection remains unsuccessful.

(C) The utility shall prepare a semi-annual schedule of uncollectible accounts. The semi-annual schedule shall consist of accounts the utility has determined to be uncollectible.

(D) The utility shall generate a statement setting forth the efforts that have been made to collect the account and a statement that such efforts have been unsuccessful.

(E) The utility shall produce a statement, including the reasons therefore, that the utility believes it is not economically feasible to pursue collection efforts on the specified uncollectible account.

(F) A schedule of uncollectible accounts shall be submitted to the Board of Public Works for action by the Board of Public Works to declare said accounts listed as collectible or uncollectible and may authorize the utility to cease further collection procedures and expense the amounts outstanding on the accounts declared uncollectible as bad debts.

(G) The utility may attempt to recover the amount of the bad debt in a civil action against the debtor.

(H) Accounts in which state and/or federal law mandates an amount is to be written off shall be written off as bad debts upon the approval of the Clerk-Treasurer of the city.
(Ord. 2102, passed 10-4-10)

§ 35.08 PROMOTION OF ECONOMIC DEVELOPMENT AND TOURISM.

(A) The Common Council is hereby authorized to budget and appropriate funds from the General Fund or from other funds to pay the expenses incurred in promoting the betterment of the municipality.

(B) These expenses may include, but are not necessarily limited to, the following:

(1) Membership dues in local, regional, state and national associations of a civic, educational, or governmental nature, which have as their purpose the betterment and improvement of municipal operations.

(2) Direct expenses for travel, meals, and lodging in conjunction with municipal business, meetings, or organizations to which the municipality belongs.

(3) Expenses incurred in the promotion of tourism, residential development, economic or industrial development for the municipality, including meeting room rental, decorations, meals, travel, and promotional booths.

(4) Commemorative plaques, certificates, or objects such as commemorative keys.

(5) Annual employee dinner to promote the betterment and morale of city employees.

(6) Items to recognize employees such as a retirement gift, cake, dinner and the like, and gifts such as flowers for an illness of an employee or death in family.

(7) Other purposes which are deemed by the Common Council to directly relate to the promotion and betterment of the city.

(C) All promotional expenditures must be approved by the Common Council prior to the event and paying of the claim.

(Ord. 2200, passed 9-8-14)

§ 35.09 POLICY ON MATERIALITY AND PROCESS FOR REPORTING MATERIAL ITEMS.

(A) All erroneous or irregular variances, losses, shortages, or thefts of the City of Elwood funds or property, or funds or property the City of Elwood holds in trust, shall be reported to the Clerk Treasurer or his or her designee promptly.

(B) It will be the policy of the Clerk Treasurer to report to the State Board of Accounts any erroneous or irregular variances, losses, shortages, or thefts of cash in excess of \$500, except for inadvertent clerical errors that are identified timely and promptly corrected with no loss to the City of Elwood.

(C) It will be the policy of the Clerk Treasurer to report promptly to the State Board of Accounts any erroneous or irregular variances, losses, shortages, or thefts of non-cash items in excess of \$2,000, estimated market value, except for those resulting from inadvertent clerical errors or misplacements that are identified timely and promptly corrected with no loss to the City of Elwood, and except for losses from genuine accidents.

(Ord. 2246, passed 6-6-16)

*FUNDS***§ 35.15 CASH RESERVE FUNDS.**

(A) A Cash Reserve Fund is hereby authorized and created from surplus earnings of the Elwood Sewage Company, and disbursements therefrom may be approved by the Common Council from time to time.

(B) A Cash Reserve Fund is hereby authorized and created from surplus earnings of the Elwood Water Company, out of which a loan shall be made to the Elwood Wastewater Company for payment for health insurance premiums, equipment repairs, and/or purchases and lease payments, for a period not to exceed five years with no interest thereon.

(C) The Cash Reserve Funds shall be managed in accordance with I.C. 8-1.5-3-11. (Ord. 1570, passed 5-9-83; Am. Ord. 2030, passed 10-3-05)

§ 35.16 CUMULATIVE CAPITAL DEVELOPMENT FUND.

(A) There is hereby established an Elwood Cumulative Capital Development Fund.

(B) An ad valorem property tax levy will be imposed and the revenues from the levy will be retained in the Elwood Cumulative Capital Development Fund.

(C) The funds accumulated in the Elwood Cumulative Capital Development Fund will be used for the payment of the city’s portion of the Elwood “P” Street Project, as per 36-9-16.5-2, improvements of public ways. Further, to accumulate funds to be used for the construction of public buildings. As per I.C. 36-9-16-2, to acquire the land, and any improvements on it that are necessary for the construction of public buildings.

(D) Notwithstanding division (C) above, funds accumulated in the Elwood Cumulative Capital Development Fund may be spent for purposes other than the purposes stated, if the purpose is to protect the public health, welfare or safety in an emergency situation which demands immediate action. Money may be spent under the authority of this section only after the Mayor issues a declaration that the public health, welfare and safety is in immediate danger that requires the expenditure of money in the fund. (Ord. 1620, passed 7-1-85; Am. Ord. 1817, passed 7-11-95)

§ 35.17 PUBLIC EMPLOYEES’ RETIREMENT FUND.

(A) The city hereby elects to become a participant in the Public Employees’ Retirement Fund as established by I.C. 5-10.2-1 and all acts amendatory and supplemental thereto.

(B) The city hereby agrees to make the required contributions under I.C. 5-10.2-1, and all acts amendatory and supplemental thereto. The city shall appropriate funds as are necessary each year to pay the current costs of participation in the fund accruing annually.

(C) The positions listed on Appendix A attached to Ordinance No. 1630, as modified, are declared to be covered by the fund and are adopted by reference as if set out fully in this section.

(D) It is hereby declared that none of the classifications or positions specified in the appendix described in division (C) are compensated on a fee basis or of an emergency nature or in a part-time category.

(E) The active participating membership of the city shall begin on July 1, 1986.
(Ord. 1630, passed 5-5-86)

Editor's note:

The city from time to time enacts resolutions enlarging its participation in the Public Employees' Retirement Fund. Copies of these resolutions are on file and available for public inspection in the office of the City Clerk.

§ 35.18 NON-REVERTING SPECIAL FUND FOR THE RECEIPT AND PAYMENT OF RETIREE INSURANCE PREMIUM FUNDS.

There is hereby established in the Clerk-Treasurer's Office a non-reverting special fund to receive and manage retiree insurance premiums, and to appropriate distributions therefrom, all for the purpose of complying with the collective bargaining agreements, currently in existence and as later amended.
(Ord. 1974, passed 11-5-01)

§ 35.19 HUMANE DEPARTMENT FUND.

(A) The Common Council for the city hereby establishes a non-reverting, restricted fund for the City of Elwood Humane Department.

(B) The monies accumulated in the non-reverting, restricted fund shall be used to purchase equipment and supplies for the Humane Department.

(C) The donations made to the Humane Department shall be restricted by the donor to the purchase of equipment and supplies for the Humane Department.

(D) The Common Council hereby authorizes the use of the monies accumulated in the Humane Department's Non-Reverting, Restricted Fund by the head of the Department for the purchase of equipment and supplies.
(Ord. 2069, passed 9-8-08)

§ 35.20 RAINY DAY FUND.

(A) A Rainy Day Fund is hereby established in accordance with I.C. 36-1-8-5 and I.C. 36-1-8-5.1 and will be administered accordingly.

(B) The city may only use the funding source specified herein to fund the Rainy Day Fund: the CEDIT funds received and to be received from the Madison County Auditor and the Tipton County Auditor.

(C) The city may, in the future, adopt a subsequent ordinance or resolution authorizing the use of another funding source for the Rainy Day Fund.

(D) Under I.C. 36-1-8-5.1, the Department of Local Government Finance may not reduce the actual maximum permissible levy of the city as a result of the balance in the Rainy Day Fund of the city.

(E) The Rainy Day Fund is subject to the same appropriation process as any other tax money received by the city.

(Ord. 2047, passed 5-14-07)

PURCHASING PROCEDURES

§ 35.30 BOARD OF WORKS PURCHASING AGENCY ESTABLISHED.

The Board of Works Purchasing Agency or the Purchasing Agency is established as the purchasing agency for the city.

(Ord. 1913, passed 6-22-98)

§ 35.31 POWERS AND DUTIES.

(A) The Purchasing Agency shall have all the powers and duties authorized under I.C. 5-22, as may be supplemented from time to time by ordinances adopted by the Council and policies adopted by the Purchasing Agency.

(B) The Purchasing Agency shall act as the purchasing agency for every agency, board, office, branch, bureau, commission, council, department or other establishment of the governmental body of the city.

(Ord. 1913, passed 6-22-98)

§ 35.32 DESIGNATION OF PURCHASING AGENTS.

The Purchasing Agency may designate in writing any employee of the city as a purchasing agent.

(Ord. 1913, passed 6-22-98)

§ 35.33 PURCHASING REGULATIONS.

(A) The Elwood Board of Public Works and Safety, in purchasing materials where the total purchase price of the materials is \$5,000 or more, but less than \$25,000, shall be obligated to solicit and receive two separate quotes for each public purchase so contemplated.

(B) Upon the solicitation and receipt of two separate quotes as hereinabove contemplated, the Elwood Board of Public Works and Safety shall award a contract for the purchase of the materials to the lowest responsible and responsive vendor who has submitted quotes for each class of materials required. However, if a contract awarded under this section is not awarded to that vendor who has submitted the lowest quote, the factors used to justify that award must be stated specifically in the minutes of the Elwood Board of Public Works and Safety at the time the award is made, and the minutes must be kept available for public inspection.

(C) As with regard to any other public purchase, the Elwood Board of Public Works and Safety may reject all quotes and ask for new quotes. If no valid quotes are received for an item, the Board may purchase that item on the open market without further solicitation of quotes, after stating specifically in the minutes of the board from whom quotes were solicited and that no such solicited quotes were forthcoming from the vendors.

(D) For the purposes of this section, definitions of the terms “materials,” “responsible quoter (vendor)” and “responsive quoter (vendor)” shall be the same as those definitions specified in I.C. 5-22-10-4 for the same terms.

(E) The terms and provisions of this section shall be binding upon the Elwood Board of Public Works and Safety in fulfilling its responsibilities as purchasing agent for both the Elwood Civil City and Elwood Utilities.

(Ord. 1602, passed 1-7-85)

§ 35.34 PURCHASE OF SUPPLIES MANUFACTURED IN THE UNITED STATES.

Supplies manufactured in the United States shall be specified for all city purchases, and shall be purchased unless the city determines that:

(A) The supplies are not manufactured in the United States in reasonably available quantities;

(B) The prices of the supplies manufactured in the United States exceed by an unreasonable amount the price of available and comparable supplies manufactured elsewhere;

(C) The quality of the supplies manufactured in the United States is substantially less than the quality of comparably priced available supplies manufactured elsewhere; or

(D) The purchase of supplies manufactured in the United States is not in the public interest.

(Ord. 1926, passed 6-7-99)

FIXED ASSET CAPITALIZATION POLICY**§ 35.40 DEFINITIONS AND PROVISIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUILDINGS.

(1) A department will capitalize buildings at full cost with no subcategories for tracking the cost of attachments. Examples of attachments are roofs, heating, cooling, plumbing, lighting, or sprinkler systems or any part of the basic building. The department will include the cost of items designed or purchased exclusively for the building.

(2) A department's new building will be capitalized only if it meets the following conditions:

(a) The total cost exceeds \$10,000; and

(b) The useful life is greater than two years.

(3) A department improving or renovating an existing building will capitalize the cost only if the result meets all of the following conditions:

(a) The total cost exceeds \$10,000;

(b) The useful life is extended two or more years; and

(c) The total cost will be greater than the current book value and less than the fair market value.

(4) Capital building costs will include preparation of land for the building, architectural and engineering fees, bond issuance fees, interest cost (while under construction), accounting costs of material and any costs directly attributable to the construction of a building.

(5) A department will record donated buildings at fair market value on the date of transfer with any associated costs.

(6) Purchases made using federal or state funding will follow the source funding policies and above procedures.

CAPITAL OUTLAYS. Expenditures which benefit both the current and future fiscal periods. This includes costs of acquiring land or structure; construction or improvements of buildings, structures or other fixed assets; and equipment purchases having an appreciable and calculable period of usefulness. These are expenditures resulting in the acquisition of or addition to the government's general fixed assets.

ENTERPRISE FUNDS.

(1) Those funds used to account for operations:

(a) That are financed and operated in a manner similar to private business enterprise - where the intent of the governing body is that the costs (expenses, including depreciation) of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges; or

(b) Where the governing body has decided that periodic determination of revenues earned, expenses incurred, and/or net income is appropriate for capital maintenance, public policy, management control, accountability and other purposes.

(2) The enterprise funds in the city shall include the municipally owned water and sewage utilities. Operation of these utilities shall require enterprise fund accounting and reporting.

FIXED ASSET. Tangible assets of a durable nature employed in the operating activities of the unit and that are relatively permanent and are needed for the production or sale of goods or services are termed property, plant and equipment or fixed assets. These assets are not held for sale in the ordinary course of business. This broad group is usually separated into classes according to the physical characteristics of the items (e.g. land, buildings, improvements other than buildings, machinery and equipment, furniture and fixtures).

HISTORICAL COST. The cash equivalent price exchanged for goods or services at the date of acquisition. Land, buildings, equipment and most inventories are common examples of items recognized under the historical cost attribute.

IMPROVEMENTS OTHER THAN BUILDINGS.

(1) The definition of this group is improvements to land for better enjoyment, attached or not easily removed and will have a life expectancy of greater than two years.

(2) Examples are walks, parking areas and drives, golf cart paths, fencing, retaining walls, pools, outside fountains, planter underground sprinkler systems and other similar items.

(3) **IMPROVEMENTS** do not include roads, streets or assets that are of value only to the public. Roads or drives upon city-owned land that provide support to city facilities are assets. A sidewalk down the road for public enjoyment is an **INFRASTRUCTURE IMPROVEMENT** and is not capitalized. However, sidewalks installed upon city-owned land for use by the public and for the support of city facilities are capital assets.

(4) This city will capitalize new improvements or renovations to existing improvements other than buildings only if the result meets the following conditions:

- (a) The total cost exceeds \$10,000;
- (b) The asset's useful life is extended two or more years; and
- (c) The total cost will be greater than the current book value and less than the fair market value.

(5) A department's donated improvements other than buildings will be recorded at fair market value on the date of transfer with any associated costs.

(6) Purchases made using federal or state funding will follow the source funding policies and above procedures.

LAND.

(1) This city will capitalize all land purchases, regardless of cost.

(2) Exceptions to land capitalization is land purchased outright, as easements or rights-of-way for infrastructure. Examples of infrastructures are roads, streets, street lighting systems, bridges, overpasses, sidewalks, curbs, parking meters, street signs, viaducts, wharfs and storm water collection.

(3) Original cost of land will include the full value given to the seller, including relocation, legal services incidental to the purchase (including title work and opinion), appraisal and negotiation fees, surveying and costs for preparing the land for its intended purpose (including contractors and/or city workers (salary and benefits)), such as demolishing buildings, excavating, clean-up, and/or inspection.

(4) A department will record donated land at fair market value on the date of transfer plus any associated costs.

(5) Purchases made using federal or state funding will follow the source funding policies and above procedures.

MACHINERY AND EQUIPMENT.

(1) The definition of ***MACHINERY AND EQUIPMENT*** is an apparatus, tool or conglomeration of pieces to form a tool. The tool will stand alone and not become a part of a basic structure or building.

(2) This city will capitalize and tag items with an individual value equal to or greater than \$10,000. Machinery combined with other machinery to form one unit with a total value greater than the above mentioned limit will be one unit.

(3) Shipping charges, consultant fees and any other costs directly associated with the purchase, delivery or set up, (including contractors and/or city workers (salary and benefits)), which makes the equipment operable for its intended purpose will be capitalized.

(4) Improvements or renovations to existing machinery and equipment will be capitalized only if the result of the change meets all of the following conditions:

(a) Total costs exceeds \$10,000;

(b) The useful life is extended one or more years; and

(c) The total costs will be greater than the current book value and less than the fair market value.

(5) Examples include:

(a) A work truck being equipped with screens, lights or radios for use as a single unit throughout its life expectancy is considered one unit;

(b) If police cars are constantly changing light bars or radios to other vehicles, the city will capitalize each piece of equipment separately, if it meets the required dollar amount;

(c) A department's computer (CPU, monitor, keyboard and printer) is considered one unit;

(d) A department will record donated machinery and equipment at fair market value on the date of transfer with any associated costs; and

(e) Purchases made using federal or state funding will follow the source funding policies and above procedures.

TANGIBLE ASSETS. Assets that can be observed by one or more of the physical senses. They may be seen and touched and, in some environments, heard and smelled.

(Ord. 2044, passed 12-4-06; Am. Ord. 2044, passed 7-12-10)

§ 35.41 RECORDING AND ACCOUNTING.

(A) The city and its various departments shall classify capital expenditures as capital outlays within the fund from which the expenditure was made in accordance with the *Chart of Accounts of the Cities and Towns Accounting Manual*. The cost of property, plant and equipment includes all expenditures necessary to put the asset into position and ready for use. For purposes of recording fixed assets of the city and its departments, the valuation of assets shall be based on historical cost or where the historical cost is indeterminable, by estimation for those assets in existence.

(B) The city's municipally owned utilities shall record acquisition of fixed assets in accordance with generally accepted accounting principles. When an asset is purchased for cash, the acquisition is simply recorded at the amount of cash paid, including all outlays relating to its purchase and preparation for intended use. Assets may be acquired under a number of other arrangements including:

- (1) Assets acquired for a lump-sum purchase price;
- (2) Purchase on deferred payment contract;
- (3) Acquisition under capital lease;
- (4) Acquisition by exchange of nonmonetary assets;
- (5) Acquisition by issuance of securities;
- (6) Acquisition by self-construction; and
- (7) Acquisition by donation or discovery.

(C) Some of these arrangements present special problems relating to the cost to be recorded, for example, in utility accounting, interest during a period of construction has long been recognized as a part of the asset cost. Reference to an intermediate accounting manual will illustrate the recording of acquisition of assets under the aforementioned acquisition arrangements. For purposes of recording fixed assets of the utilities, the valuation of assets shall be based on historical cost.

(D) In addition, an asset register (prescribed form 211) shall be maintained to provide a detailed record of the capital assets of the governmental unit.

(Ord. 2044, passed 12-4-06; Am. Ord. 2044, passed 7-12-10)

§ 35.42 SAFEGUARDING OF ASSETS.

Be it ordained that accounting controls shall be designed and implemented to provide reasonable assurances that:

Elwood - Administration

(A) Capital expenditures made by the city, its various departments and utilities shall be in accordance with management's authorization as documented in the minutes;

(B) Transactions of the utilities shall be recorded as necessary to permit preparation of financial statements in conformity with generally accepted principles;

(C) Adequate detail records shall be maintained to assure accountability for city and utility owned assets;

(D) Access to assets shall be permitted in accordance with management's authorization; and

(E) The recorded accountability for assets shall be compared with the existing assets at least every two years and appropriate action shall be taken with respect to any difference.

(Ord. 2044, passed 12-4-06; Am. Ord. 2044, passed 7-12-10)

CHAPTER 36: PERSONNEL

Section

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GENERAL EMPLOYEE POLICIES

§ 36.01 SOCIAL SECURITY BENEFITS PROGRAM.

(A) The Council hereby elects coverage under the Social Security Act, as provided by I.C. 5-10.1-2-1.

(B) All positions not covered by an existing retirement plan are designated as those which are to be covered.

(C) For the purpose of carrying out the provisions of Title 11, Section 218 of the *Federal Social Security Act* and amendments thereof, the agreements entered into between the state agency with the approval of the Governor and the Social Security Administration is made a part of this section and shall be termed as an agreement between this political subdivision and the state agency and shall become a part of the agreement or modification of the agreement between the state and the Social Security Administrator.

('66 Code, § 2-6-1-3) (Ord. 1172, passed 10-3-66)

§ 36.02 FUNERAL BENEFITS FOR POLICE OFFICERS AND FIRE FIGHTERS.

(A) Funeral benefits shall be paid on behalf of any police officer as a member of the 1925 fund to the officer's heirs or estate, in an amount as set forth in I.C. 36-8-6-9.8. (Ord. 1796, passed 9-7-93; Am. Ord. 1830, passed 11-14-94)

(B) Funeral benefits shall be paid on behalf of any fire fighter as a member of the 1937 fund to the officer's heirs or estate, in an amount as set forth in I.C. 36-8-6-9.8. (Ord. 1798, passed 9-7-93; Am. Ord. 1831, passed 11-14-94)

§ 36.03 CONFLICT OF INTEREST AND NEPOTISM.

(A) The city finds that it is necessary and desirous to adopt a policy of conduct with regard to nepotism in the employment with the city and in contracting with the city in order to continue to be able to provide local government services to its residents and to comply with the new laws effective July 1, 2012 known as I.C. 36-1-20.2 and I.C. 36-1-21, respectively.

(B) On July 1, 2012 the city shall have a nepotism and a contracting with a unit policy that complies with the minimum requirements of I.C. 36-1-20.2 (hereinafter “nepotism policy”) and I.C. 36-1-21 (hereinafter “contracting with a unit by a relative policy”) and implementation will begin.

(C) The city nepotism policy is hereby established effective July 1, 2012 by adopting the minimum requirements provisions of I.C. 36-1-20.2, and including all future supplements and amendments thereto which become law from time to time, and making them a part hereof as if fully set out herein. In addition a copy of I.C. 36-1-20.2 in effect on July 1 is attached hereto.

(D) The city contracting with a unit by a relative policy is hereby established effective July 1, 2012 by adopting the minimum requirements provisions of I.C. 36-1-21, and including all future supplements and amendments thereto which become law from time to time, and making them a part hereof as if fully set out herein. In addition a copy of I.C. 36-1-21 in effect on July 1 is attached hereto.

(E) The city finds that both I.C. 36-1-20.2 and I.C. 36-1-21 specifically allow a unit to adopt requirements that are more stringent or detailed and that more detailed are necessary.

(F) The city further finds that a single member of the legislative body cannot act for the body to make work assignments, compensation, grievances, advancement or a performance evaluation without prior authority of a majority of the body and therefore without such authority by the majority he or she will not be in the direct line of supervision. (See I.C. 36-4-6-11 and I.C. 36-5-2-9-4.)

(G) The city finds that a single member of governing bodies with authority over employees in the city cannot act for the governing body to make work assignments, compensation, grievances, advancement or a performance evaluation without prior authority of a majority of the body, when a statute provides that a majority is needed to act, and therefore, without such authority by the majority the single member will not be in the direct line of supervision.

(H) All elected and appointed officials and employees of the city are hereby directed to cooperate fully in the implementation of the policies created by this section and demonstrating compliance with these same policies.

(I) Failure to abide by or cooperate with the implementation, compliance and certifications connected with the nepotism policy is a violation and may result in the discipline, including termination of an employee or a transfer from the direct line of supervision or other curative action. An elected or

appointed official of the city who fails to abide by or cooperate with the implementation, with the compliance and with mandated certifications of either the nepotism policy or the contracting with a unit by a relative policy may be subject to action allowed by law.

(J) Failure to abide by or cooperate with the implementation, compliance and certifications connected with the contracting with unit by a relative policy is a violation and may result in the discipline, including termination, of an employee or a curative action. An elected or appointed official of the city who fails to abide by or cooperate with the implementation, with the compliance and with mandated certifications of either the nepotism policy or the contracting with unit by a relative policy may be subject to action allowed by law.

(K) The polices created by this section are hereby directed to be implemented by any of the following actions: a) posting a copy of this section in its entirety in at least one of the locations in the city where it posts employer posters or other notices to its employees; b) providing a copy of this section to its employees and elected and appointed officials; c) providing or posting a notice of the adoption of this section; or d) any such other action or actions that would communicate the polices established by this section to its employees and elected and appointed officials. Upon any of taking these actions these policies are deemed implemented by the city.

(L) A copy of the provisions of I.C. 36-1-20.2 and I.C. 36-1-21 effective July 1, 2012 are attached to Ord. 2143, passed June 4, 2012.

(M) Two copies of I.C. 36-1-20.2 and I.C. 36-1-21, and as supplemented or amended, are on file in the office of the Clerk or Clerk-Treasurer for the city for public inspection as maybe required by I.C. 36-1-5-4.

(Ord. 2143, passed 6-4-12)

DRUG AND ALCOHOL POLICY

§ 36.15 INTENT; PERSONS SUBJECT TO POLICY.

(A) The city has a strong commitment to provide a safe workplace for its employees and to establish programs which promote a high standard of employee health. Consistent with the commitment, the city has developed a drug and alcohol testing program/policy. The city's goal is to establish and maintain a work environment that is free from the adverse effects of drug and alcohol abuse.

(B) It is not the intent of the city to intrude into the private lives of our employees, but for employees to report for work in a condition that enables them to perform their duties without injury to

themselves or their fellow employees. An employee who is involved with drugs or alcohol off-the-job can have a negative input on performing his or her job.

(C) (1) Employees who request assistance in dealing with a personal drug or alcohol problem will receive help from a substance abuse professional (SAP). The SAP will have the right to refer the employee to an appropriate treatment resource that can best help the employee with his or her problem.

(2) Medical expense plan benefits will be available to eligible employees electing to participate in a substance abuse program and/or a rehabilitation program including follow up testing subject to the provisions of those plans. Anything not covered by the employee's medical plan will be the employee's responsibility.

(3) However, by volunteering for help, an employee cannot avoid disciplinary action for a violation of the policy that has already occurred. Employees will be given two opportunities to utilize the SAP for a drug/alcohol program. If an employee volunteers for treatment and does not complete the recommended program, the city has fulfilled its only obligation for treatments for an employee.

(4) Every employee covered by this policy will receive periodical drug/alcohol education information. A copy of this policy and listing of telephone numbers for SAP representatives will be posted on the bulletin board in the work area.

(D) Employees shall not use alcohol or illegal drugs at any time when it could affect their ability to perform their jobs. Any employee whose work performance, attendance or behavior on the job creates a reasonable doubt shall be required to report for a drug/alcohol screen test. This will be at the expense of the city, on city time.

(E) Before any applicant is hired, he or she shall be tested for the presence of illegal drugs and or alcohol. Any applicant who tests positive for illegal drugs and or alcohol will be rejected for employment.

(F) All city employees and applicants for employment will be subject to this policy.
(Ord. 1884, passed 11-6-96)

§ 36.16 OBJECTIVES.

The objectives of this policy are as follows:

(A) To provide for consistent and documented practices and procedures for pre-employment and employee drug screen and alcohol tests.

(B) To define circumstances when the city may require current employees to submit to drug and alcohol screen tests.

(C) To define actions that will be taken against an employee when a positive drug/alcohol screen test is reported. All city employees shall follow the city's substance abuse program or will be

terminated. If an employee tests positive any time after completing the substance abuse program and/or rehabilitation program it will be grounds for termination.
(Ord. 1884, passed 11-6-96)

§ 36.17 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADMINISTRATOR. Mayor.

ASSISTANT ADMINISTRATOR. Clerk-Treasurer.

DESIGNATED REPRESENTATIVE. The Board of Public Works and Safety, a member, a manager, a supervisor, a department head or an administrator's appointee for each department.

DRUG/ALCOHOL TEST. Any scientifically recognized method used to examine human fluids to detect the presence of a drug and or alcohol.

NIDA. *National Institute Drug Act.*

POST-ACCIDENT. Drug/alcohol testing may be performed following any accident.

PRE-EMPLOYMENT DRUG/ALCOHOL SCREEN TEST. A drug/alcohol screen test is required of all employment applicants who are offered employment.

RANDOM. Testing conducted on a random unannounced basis, determined by a highly qualified independent testing company and the city, by following the federal DOT regulation requirements in regard to commercial driver's license (CDL) holders and on all city employees. The percentage amount of random testing will be determined by the city and federal requirements.

REASONABLE SUSPICION DRUG/ALCOHOL TEST. Drug and alcohol screen tests that will be taken when facts and circumstances would cause any two management or designated appointees, using reasonable judgment, to believe that an employee is using or under the influence of drugs and/or alcohol.

RETESTED/RETESTING. Also known as split-sample. Testing done from original urinalysis procedure split into two separate vials.
(Ord. 1884, passed 11-6-96)

§ 36.18 POLICY.

It is the intent of the city to have a strong commitment to provide all employees with safe working conditions. This simply means that there is no place in our working environment for alcohol or drug

abuse. This policy will follow all federal DOT regulation requirements, in regard to CDL holders and city employee drug and alcohol polices. Implementation, tracking and record keeping of the alcohol and drug testing program will be controlled and supervised by a highly qualified independent testing company, designated by the city.

(Ord. 1884, passed 11-6-96)

§ 36.19 PERSONS SUBJECT TO THE TESTING PROGRAM.

The following are subject to testing:

(A) All applicants for employment.

(B) All employees as mandated by state and federal agencies and city ordinance.

(Ord. 1884, passed 11-6-96)

§ 36.20 PRE-EMPLOYMENT DRUG TESTING.

A drug screen test is required of applicants who are offered employment. If a testing sample is confirmed positive, the applicant will no longer be considered for employment.

(Ord. 1884, passed 11-6-96)

§ 36.21 RANDOM TESTING FOR ALL CITY EMPLOYEES.

Testing will be conducted on a random unannounced basis, determined by a highly qualified independent testing company and the city, by following the federal DOT regulation requirements in regard to CDL holders and all city employees. Random pools and percentage of employees tested will be predetermined by the Board of Works and the highly qualified independent testing company. All employees of the city remain in the random selection pools at all times, regardless of whether or not they have been previously selected for testing.

(Ord. 1884, passed 11-6-96)

§ 36.22 POST-ACCIDENT TESTING.

Both drug and alcohol testing will be performed following any accident for any employee being treated away from the scene by a hospital or clinic where probable cause warrants. Immediately following all vehicle accidents both drug and alcohol mandatory testing will be performed (per federal regulations).

(Ord. 1884, passed 11-6-96)

§ 36.23 NOTICE OF SCHEDULED TESTING.

(A) Employees who, in the judgment of management, are under the influence of drugs and/or alcohol while at work or whose job performance is being adversely affected by the abuse of drugs and/or alcohol may be tested without notice.

(B) All applicants for employment will be tested as part of the pre-employment process.

(C) Employees who are required to submit to a drug or alcohol test will be required to submit to the test immediately upon notification by an administrator or administrative representative.

(Ord. 1884, passed 11-6-96)

§ 36.24 SUBSTANCES COVERED BY THE TESTING POLICY.

(A) This testing policy will determine the presence of the following substances in the body:

- (1) Amphetamines;
- (2) Cannabinoids;
- (3) Cocaine;
- (4) Opiates; and
- (5) Phencyclidine.

(B) Consequently, the list may grow to reflect further change in both the legal and illegal drug markets.

(Ord. 1884, passed 11-6-96)

§ 36.25 TESTING PROCEDURES.

(A) *Drug testing.*

(1) *Two-stage testing.* The city will employ the two-stage testing program because of the consequences of a positive test results on employees. Urine samples will be analyzed by a highly qualified independent laboratory which has been selected by the city.

(2) *Retested/retesting; split-sample.* Testing is done from an original urinalysis procedure and split into two separate vials. Any applicants or employees who test positive have the right to have their sample retested. The retesting will be done at the individual's expense. Request for retesting must be sent to a medical review officer (MRO), in writing, within 72 hours of notification of the positive result. Prior to retesting a certified check or money order for the cost of retesting must be received in the office

of the independent testing company within five calendar days of receipt of certified mail billing. If not received within five calendar days the request for retesting will be null and void.

(3) *Sequence of testing.* All samples will be tested according to the following sequence.

(a) All samples will first be subjected to an enzyme multiplied immunoassay test (EMIT) screening process.

(b) Those samples having a negative screen (no illegal or illicitly used substances present) will be considered to have “passed” the test and no further testing will be done on the sample.

(c) Those samples that test positive on the first screen will be tested more extensively by means of gas chromatography/mass spectrometry (GCMS).

(d) If the confirmatory GCMS test is negative, the sample will be considered to have passed and no further action will be taken.

(e) If the sample is confirmed to be positive by GCMS and reported as such by the MRO, the applicant or employee is entitled to have the sample retested by a different NIDA laboratory. The retesting will be done at the individual’s expense.

(f) Upon retesting of the sample, the results are still positive the applicants for employment will not be further considered; however, employees may be reinstated in accordance with this policy.

(g) Employees who test positive for drugs shall be removed immediately from duty, without pay, and will be given the opportunity to receive help through the substance abuse program. Refusal of treatment or failure to complete the recommended treatment shall result in termination. Employees electing to enter a rehabilitation program must pass a drug test before returning to their position. Employees failing this test will be terminated from employment.

(h) If management believes an employee may be in violation of the policy, management may order the employee to submit to mandatory drug testing. Refusal to consent to the testing will result in termination.

(i) Employees will be given only one opportunity to utilize the Substance Abuse Program provided for herein. Should an employee test positive for drugs after having been reinstated from a successful Substance Abuse Program, the employee will be terminated.

(B) *Alcohol testing.*

(1) The sequence of testing is as follows:

(a) A screening test is conducted first. Any result less than 0.02 alcohol concentration is considered a “negative” test. If the alcohol concentration is 0.02 or greater, a second confirmation test

must be conducted. The employee and the individual conducting the breath test, called a breath alcohol technician (BAT), must complete the alcohol testing form to ensure that the results are properly recorded. Any one testing between .02 and .0399 shall be relieved of duty without pay for 24 hours.

(b) The confirmation test, if required, must be conducted using an evidential breath testing (EBT) instrument that prints out the results, date and time, a sequential test number of the EBT to ensure the reliability of the results.

(c) If management believes an employee may be in violation of this policy, management may order the employee to submit to mandatory alcohol testing. Refusal to consent to the testing will result in termination of employment.

(d) The confirmation test results determine any action taken.

(2) Employees who test positive for alcohol between 0.02 and .0399 breath alcohol content (BAC) shall be removed immediately from duty, without pay, and may return to work after 24 hours. The employee will be given the opportunity to receive help from the SAP. This opportunity shall be offered a maximum of two times per employee, a third positive test shall result in termination of employment.

(3) Employees who test positive for alcohol .04 or greater breath alcohol content (BAC) shall be immediately removed from duty, without pay, and will be given the opportunity to receive help through the substance abuse program (SAP). Refusal of treatment or failure to complete the recommended treatment shall result in termination. The employee testing positive for alcohol at .04 or greater BAC shall be given only one opportunity to receive help from the SAP. A second positive test in this category shall result in termination of employment.

(4) EBT instruments will be used for confirmatory alcohol test.

(5) Only instruments on the list of approved devices in the Federal Register will be used.

(6) Only certified BATs may administer the alcohol tests.
(Ord. 1884, passed 11-6-96; Am. Ord. 2229, passed 6-1-15)

§ 36.26 PROCEDURAL GUIDELINES.

The alcohol/drug abuse policy/program provides that the city may:

(A) Inspect city property and premises for illegal drugs and prohibited alcohol beverages.

(B) Require an employee to undergo a drug or alcohol test to determine if he or she is under the influence of a drug or alcohol.

(C) If there is a violation, or suspicion of a violation, of this policy, the administrator, and or his designated appointee are to be immediately notified. They will take appropriate action and notify the Board of Public Works and Safety or law enforcement officials as deemed necessary.
(Ord. 1884, passed 11-6-96)

§ 36.27 INSPECTIONS.

(A) The city will conduct inspections to the extent considered necessary to insure compliance with the policy. Entry onto city property, including parking areas and work site areas, is deemed consent to an inspection of a person, vehicle and personal effects at any time while entering, on or leaving the property, as well as off city premises while engaged in city business. It is not the intent to make inspections indiscriminately, but only when there is a reasonable suspicion that there may be violation of the policy/program.

(B) In order to take action against an employee, an employer must have a “reasonable suspicion” that the individual is under the influence of alcohol and/or drugs or other controlled substances. In order to establish reasonable suspicion, the specific behavior of the individual must be observed and documented, by members of management or their designated appointee’s, one of whom has been trained in the detection of influence.

(C) Inspection of clothing and personal effects, e.g., lockers, desks, vehicles, effects from pockets or handbags, etc., shall be conducted by a law enforcement agency.

(D) Body searches, e.g., frisking, strip searches, etc., will be conducted by a law enforcement agency, in accordance with state and federal laws.

(E) Employees who refuse to cooperate shall not be forcibly inspected, but they will be told that submission to inspection is a condition of employment and failure to cooperate will result in suspensions without pay for whatever time is necessary for the city to investigate the matter and determine if any disciplinary action, up to and including discharge, will be taken.

(F) Any alcohol and/or drugs or controlled substances (or suspected drugs or controlled substances) will be impounded and sealed in a container. The sealed container shall bear the date, names of the persons present and a general description of the item, etc. A receipt shall be given for seized property. Seized items shall be retained in a locked cabinet under the exclusive control of an evidence officer of the Elwood Police Department. If possession is transferred, a chain of receipts shall be established. Seized property may turn out, after investigation, to be property that was properly and legally in an employee’s possession. In such cases the property will be returned and a receipt obtained.

(G) If not already involved, local or state law enforcement personnel should be notified in order to communicate, as appropriate, with local authorities concerning identification of the material and possible prosecution if federal, state or local laws have been broken.

(Ord. 1884, passed 11-6-96)

§ 36.28 FEDERAL REQUIREMENTS.

(A) Pursuant to 41 USC § 701, each employee is hereby notified that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the workplace.

(B) Further, any employee violating any federal, state or criminal drug statute shall notify the city within five days of any conviction of the crime. Any employee convicted of any unlawful manufacture, distribution, dispensation, possession or use of a controlled substance will be dismissed.

(C) Any employee who is charged with a violation of a federal, state or local drug statute, shall notify the city immediately. Any employee who operates a city vehicle and who is charged with a D.W.I. or whose driver's license is suspended for any reason shall also notify his or her department head immediately.

(D) Employees holding a required CDL who are convicted of D.W.I., shall notify their department head in writing the next working day after the conviction or within five days of the conviction, whichever is sooner.

(Ord. 1884, passed 11-6-96)

§ 36.29 RECORD KEEPING.

Records will be maintained, in keeping with the federal regulations, by the drug and alcohol testing contracted services company. All drug and alcohol policy/program records required to be maintained by the city will be properly recorded and filed in the Clerk-Treasurer's office.

(Ord. 1884, passed 11-6-96)

§ 36.30 CONTRACTOR'S EMPLOYEES/VISITORS.

Contractors working for the city are to be presented with a copy of the city's policy. If a contractor's employee or a visitor is in violation of the program, he or she should be immediately escorted off the premises by the supervisor or department head, and reported to local law enforcement authorities.

(Ord. 1884, passed 11-6-96)

§ 36.31 CONFIDENTIALITY.

Drug and alcohol screen test results shall be delivered to an administrator or assistant administrator of the city who shall maintain them in the employee's confidential file. The confidential file shall be maintained in a secure fashion to prevent access by persons without a legitimate need to review the file. Drug and alcohol screen test results shall not be released or otherwise divulged to other persons or organizations without court order, prior written approval of the City Attorney or other appropriate legal process. An employee's drug and alcohol testing result will not be released to a subsequent employer without the employee's prior written consent.

(Ord. 1884, passed 11-6-96)

§ 36.32 CHANGES AND MODIFICATIONS.

The city reserves the right to change the provisions of this policy and testing program at any time in the future. Any prospective change to these guidelines should be approved by the Common Council of the city.

(Ord. 1884, passed 11-6-96)

§ 36.33 CONSENT.

All applicants for employment and all employees will be required to sign a form acknowledging that they have read and or have had a verbal presentation and understand the requirements of the city's Alcohol and Drug Abuse Policy and have received a copy of same. The consent will be filed in the employee's "confidential file" by an administrator or assistant administrator.

(Ord. 1884, passed 11-6-96)

§ 36.34 COPY OF POLICY; REFUSALS AND OBSTRUCTIONS.

(A) All pre-employment applicants who are offered employment and existing employees will receive a copy of this policy and sign a statement in recognition that the employee understands this policy. One copy will be returned to the employee and the second copy will be put into the employee's medical file.

(B) Failure to sign a release for alcohol and drug testing will be classified as insubordination and the employee shall be terminated from employment.

(C) Refusal to submit to alcohol, drug or controlled substance testing, as required by this city policy, will be recorded as a positive test and the employee will be dismissed. Refusal to submit to an alcohol or controlled substance test means the employee:

(1) Fails to provide adequate breath for testing without valid medical explanation after he or she has received notice of the requirement for breath testing accordance with this policy;

(2) Fails to provide adequate urine for controlled substance testing without a valid medical explanation after he or she has received notice of the requirement for testing in accordance with this policy; and

(3) Engages in conduct that clearly obstructs the testing process.

(Ord. 1884, passed 11-6-96)

TRAVEL POLICY**§ 36.45 REIMBURSEMENT OF ALLOWABLE EXPENSES.**

(A) The City of Elwood will reimburse all allowable expenses incurred for authorized travel pertaining to and necessary for conducting city business. Expenses incurred must be reasonable and within the guidelines established in this policy. All travel from the city limits requiring overnight lodging must have the prior approval of the Mayor, appropriate board, and the department head. Also, the travel authorization form, which will include an estimated cost, must be completed and approved by the Mayor or his designee prior to the date of travel. All expenses for reimbursement must be in accordance with the requesting department's approved budget for travel. Submissions of travel expenses must be accompanied by detailed receipts. Each receipt must contain the vendor's name, address, and date of purchase. Cash advances to employees are not permitted.

(B) Travel expenses will be reimbursable for city employees only. If a spouse travels with the employee, it is the responsibility of the employee to pay all of their spouse's expenses.

(C) Any exceptions to the guidelines established in this subchapter must have the written authorization of the Mayor, appropriate board (if applicable), and the department head (or other appropriate elected official). While on city business, such items as meals, lodging, transportation, and approved miscellaneous expenses as defined in this subchapter shall be construed as travel expenses. (Ord. 1993, passed 9-5-03)

§ 36.46 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

MISCELLANEOUS TRAVEL EXPENSES. Expenses, other than reimbursable travel expenses, incurred while on city business that include, but are not limited to, stenographic and typing services, storage of baggage, rental of room for official business, telephone calls for official business, personal calls, and gratuities within established guidelines. Detailed receipts must support miscellaneous expenses. Reimbursement of all such expenses are subject to express approval of the Mayor, appropriate board, and the department head (or other appropriate elected official).

REIMBURSABLE TRAVEL EXPENSES. Meals, lodging, and transportation expenses incurred by an employee while on city business that requires them to leave the geographical boundaries of the city.

(Ord. 1993, passed 9-5-03)

§ 36.47 TRAVEL EXPENSES NOT COVERED.

Travel expenses that are not covered by this policy include:

- (A) Personal entertainment;
- (B) Business entertainment (expenses for non-city employees);
- (C) Fines for parking, speeding, and the like;
- (D) Alcoholic beverages; and
- (E) Valet and/or other personal services.

(Ord. 1993, passed 9-5-03)

§ 36.48 REIMBURSABLE TRANSPORTATION EXPENSES.

Transportation costs reimbursable as travel expenses shall be by the most appropriate type of transportation available considering travel time, mission, availability, and costs. As a general guideline, travel within the State of Indiana should be by automobile. Travel outside the State of Indiana may be done by air, rail, or automobile.

(A) *Automobile.*

(1) Whenever an automobile is the approved method of transportation and a city vehicle is available, the employee should use the city vehicle. All appropriate mileage logs and expense receipts should be maintained.

(2) If the approved travel is to be in a privately owned vehicle, mileage logs shall be maintained and the approved city mileage rate shall be reimbursable. Mileage must be calculated from the city limits to the travel location.

(3) Miscellaneous expenses include parking fees, road tolls, bridge tolls, and similarly related expenses.

(4) A rental car may be allowed for travel outside the State of Indiana depending on the nature of the travel. The class of rental car must be standard, mid-size, compact, or economy depending upon the size of the traveling party. A larger vehicle is to be based only on the number of city employees traveling. An appropriately sized van may be allowed if a department is transporting large equipment for a departmental purpose. The rental of a vehicle is only allowable for the period of time while on city business.

(5) With respect to fuel, the standard option must be chosen, which means to begin with a full tank and return to the rental company with a full tank. The receipt for the fuel purchase should be kept and submitted for reimbursement.

(6) The vehicle must be returned on time. Any extra hour charges for a late return are not reimbursable, unless specifically subsequently approved by the Mayor. Liability and collision coverage is required.

(B) *Air travel.*

(1) Air travel, unless specifically authorized by the Mayor, approving board and the department head, is allowable only for travel outside the State of Indiana.

(2) Air tickets must be coach class to be eligible for reimbursement.

(C) *Rail and bus travel.* Rail and bus expenses are allowable for reimbursement. Travel within the State of Indiana by such conveyances must be specifically pre-authorized by the Mayor, approving board, and department head (or other elected official).

(D) *Incidental travel expenses.*

(1) Land transportation (for example, busses and taxicabs) to/from airport and business site is allowable.

(2) Baggage transfers, tips, and similar travel expenses are allowable.
(Ord. 1993, passed 9-5-03)

§ 36.49 REIMBURSABLE LODGING EXPENSES.

Expenses for hotel/motel accommodations are reimbursable if they meet the following two criteria:

(A) The travel distance (one-way) is 40 miles or more.

(B) The expenses meet the following guidelines:

(1) The city will pay only a single room rate, unless the rates are the same. Whenever possible, accommodations should be reserved using a government rate. The government rate must normally be arranged in advance of arrival. Your city identification card will be required at check-in.

(2) If the employee is attending a conference the city will pay the published room rate for the conference. Documentation should be provided showing the room rate.

(3) When traveling with a spouse, it is the responsibility of the employee to submit documentation showing the single and double room rates. The employee is responsible for paying the difference between the two rates.

(Ord. 1993, passed 9-5-03)

§ 36.50 MEALS.

(A) Meals will be paid at a rate not to exceed \$40 per day, unless prior approval has been given for a different amount by the Mayor, appropriate board, and the department head. Daily meal charges will not be averaged. On any day that meal charges exceed \$40, the employee will be responsible for the excess amount for employees attending a one-day conference or seminar, up to \$10 will be paid for lunch, when lunch is not included in the conference fee. A receipt for lunch must be provided. Gratuities will be reimbursed up to 15% on meals only where gratuities are normally paid. Gratuities will not be averaged.

(B) A meal is intended to mean one serving of a meal to an employee. Groceries are not intended to be a "meal." However, under certain circumstances the purchase of groceries may be allowable, for example, if a group of employees is going on a training session where it is impracticable to go to a restaurant. The purchase of groceries in place of meals must have the prior written authorization of the Mayor and City Clerk-Treasurer.

(Ord. 1993, passed 9-5-03)

§ 36.51 RECEIPTS.

All receipts must be itemized and in sufficient detail to determine what was purchased. Food receipts must be specifically detailed as to what food and beverages were purchased. If more than one employee is traveling, it must be indicated which employee ate or drank the items listed on the receipt. The receipts must also include the nature of the government business being conducted, as well as the names of the employees dining together.

(Ord. 1993, passed 9-5-03)

§ 36.52 DEVIATIONS FROM POLICY.

The employee must explain any deviation from this policy on the travel authorization request. Approval for the request will be in writing from the Mayor.

(Ord. 1993, passed 9-5-03)

§ 36.53 REIMBURSEMENT REPORTS.

- (A) In order to receive reimbursement for travel expenses, the employee must file an itemized report using the travel and expense report and sign the appropriate claim form.
- (B) Attached with the travel report should be receipts for each expense.
- (C) Travel expenses related to any seminar, convention, or training must include a brochure describing the program, dates, and registration costs.
- (D) Only those expenses detailed within this travel policy will be reimbursable.
- (E) A copy of the travel request form must be attached to the claim form.
- (F) Any prior authorization for deviation from this policy must be attached to the claim form.
(Ord. 1993, passed 9-5-03)

APPENDIX: DRUG/ALCOHOL TEST CONSENT FORM

I have read and or have had a verbal presentation and understand the requirements of the Elwood, Indiana, alcohol and drug abuse policy and have received a copy of the same.

I understand that my test results will be discussed with appropriate members of management. I also understand that I must abide by all rules and regulations of the policy.

Employee/Applicant Signature _____

SS# _____

Date _____

Print Employee/Applicant Name _____

Department _____

Witness Signature _____

CHAPTER 37: CITY POLICIES

Section

- 37.01 ADA grievance procedure
- 37.02 Emergency ambulance service
- 37.03 Criminal history fees
- 37.04 Charges for ambulance services
- 37.05 Responsibility for medical bills while in custody

§ 37.01 ADA GRIEVANCE PROCEDURE.

(A) *Employment.* The city does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations as outlined by the U.S. Equal Employment Opportunity Commission under Title I of the Americans with Disabilities Act of 1990 (ADA).

(B) *Effective communication.* The city will, upon request, provide appropriate aids and services leading to effective participation for people with disabilities to participate equally in city programs, services, and activities. Anyone who requires an auxiliary aid or service for effective participation or modification of policies or procedures to participate in a service, program, or activity, should contact the office of the Mayor as soon as possible, but no later than 48 hours before the scheduled event.

(C) *Modification to policies and procedures.*

(1) The city will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all of its programs, services, and activities. The ADA does not require the city to take any action that would fundamentally alter the nature of its services or programs or impose an undue financial or administrative burden to the city. Grievances regarding a service, program, or activity of the city that is not accessible to persons with disabilities should be directed to the office of the Mayor and use the appropriate grievance procedure form.

(2) The city will not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policy, such as retrieving items from locations that are open to the public, but are not accessible to persons who use wheelchairs.

(D) *Procedures.* The city has adopted an internal grievance procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by the U.S. Department of Justice regulations implementing Title II of the Americans with Disabilities Act (ADA). Title II states, in part, that “no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in programs, services, or activities sponsored by a public entity”.

(1) *Step one: file the grievance.* Complete the city grievance form. The grievance form can be found on the City of Elwood, Indiana website (<http://www.elwoodcity-in.org/>) or in the ADA Coordinator’s office. A grievance may be communicated in writing, by e-mail, by fax or by telephone, but must follow the format of the city grievance form. A grievance concerning the accessibility of city services, programs or activities should be addressed to:

Office of the Mayor
Attn: ADA Coordinator
1505 South B Street
City of Elwood, Indiana 46036

(2) *Step two: acknowledgment.* A grievance should be filed within 90 days after the grievant party becomes aware of the alleged violation. The ADA Coordinator will send an acknowledgement of receipt of the grievance within 12 working days.

(3) *Step three: informal resolution.* Following the filing of a grievance, the ADA Coordinator shall determine whether, and to what extent, an investigation of the grievance is warranted. Any resulting investigation shall be conducted by the ADA Coordinator or his or her designee. A thorough investigation affords all interested persons and their representatives an opportunity to submit evidence relevant to a grievance. The ADA Coordinator will complete the investigation within 60 calendar days of receipt of the grievance. If appropriate, the ADA Coordinator will arrange to meet with the grievant to discuss the matter and attempt to reach an informal resolution of the grievance. Any informal resolution of the grievance shall be documented in the ADA Coordinator file and the case will be closed.

(4) *Step four: written determination.* If an informal resolution of the grievance is not reached in step three, within 60 calendar days of receipt of the grievance, a written determination as to the validity of the complaint, and description of the resolution, if appropriate, shall be forwarded by the ADA Coordinator to the Executive Officer for approval.

(5) *Step five: final determination and resolution.* The ADA Coordinator shall communicate the determination and resolution to the grievant within 90 calendar days of receipt of the grievance, unless the Executive Officer authorizes additional time for further consideration of the grievance. Any authorized extension of time will be communicated to the grievant. Any request for reconsideration of the response to the grievance shall be at the discretion of the Executive Officer.

(a) If the grievant is not satisfied with city handling of the grievance at any stage of the process, or does not wish to file a grievance through city ADA Title II grievance procedures, the grievant may file a complaint directly with the U.S. Department of Justice or other appropriate state or federal agency. Use of city grievance procedure is not a prerequisite to the pursuit of other remedies.

(b) The resolution of any specific grievance will require consideration of varying circumstances, such as the specific nature of the disability; the nature of the access to services, programs, or facilities at issue, the essential eligibility requirements for participation; the health and safety of others; and the degree to which an accommodation would constitute a fundamental alteration to the service, program or facility, or cause an undue hardship to city. Accordingly, the resolution by city of any one grievance does not constitute a precedent upon which city is bound or upon which other complaining parties may rely.

(E) *File maintenance.* City ADA Coordinator shall maintain ADA grievance files for three years. (Ord. 1784, passed 5-3-93; Am. Ord. 2166-B, passed 3-3-13)

§ 37.02 EMERGENCY AMBULANCE SERVICE.

The city shall provide emergency ambulance service subject to the following rules, boundaries and fees:

(A) That the ambulance, when on an emergency run, will be driven by city personnel; and

(B) That all Emergency Medical Technicians (EMTs) shall be covered with malpractice insurance, in the amount of \$300,000 per person; and

(C) That all patients are to be transported to St. Vincent's Mercy Hospital in Elwood, Indiana; and

(D) That in the case of a disaster where either Mercy Hospital is overburdened and unable to process additional patients, or the disaster is outside the boundaries prescribed herein and ambulance assistance is requested of the Elwood ambulance, the Fire Department may transport patients to other nearby hospitals; and

(E) That the boundaries of said ambulance service shall be as follows:

(1) Beginning at the intersection of County Road 700N and State Road 37, then east on 700N to County Road 800W, then north on 800W to County Road 900N, then east on 900N to County Road 700W, then north on 700W to County Road 1100N, then east on 1100N to County Road 400W, then north on 400W to County Road 1400N, then west on 1400N to SR 37, then north on SR 37 to County Road 1900N (Rigdon Road), then west on 1900N to County Road 1000W (Madison-Tipton County Line), then south on 1000W to County Road 1500N, then west to Tipton County Road 600E (Curtisville Road), then south on Tipton County Road 600E to County Road 600S (Tipton-Hamilton County Line), then east to SR 37.

(2) Also, the ambulance service shall cover all State Highways in all directions from the city up to five miles, except as otherwise herein provided; and

(F) That the definition of “resident” herein is any person who has resided within the city limits for a period exceeding 30 days and intends to maintain a residence in said city; and

(G) That any person/non-residents traveling through Elwood or temporarily located within the city limits who needs an ambulance, and is not a resident of Elwood, shall pay a user fee of \$150; and

(H) That, when an emergency ambulance is dispatched outside the city limits, two additional ambulance personnel shall, at the discretion of the Fire Department Officer in charge of the particular crew on duty at the time, be called-in for the back-up ambulance unit, and that each of these persons shall be paid \$100 for such response. The Fire Chief and Assistant Chief can be called in and receive the compensation, but only from 5:00 p.m. to 8:00 a.m. (Monday - Friday) and anytime Saturday and Sunday.

(Ord. 1863, passed 1-22-96; Am. Ord. 1959, passed 1-7-02; Am. Ord. 1959, passed 1-3-05; Am. Ord. 1959, passed 11-1-10; Am. Ord. 1959, passed 10-1-13)

§ 37.03 CRIMINAL HISTORY FEES.

(A) Upon a request for release or inspection of a limited criminal history, the Elwood City Police Department may require a form provided by the Police Department to be completed. The form shall be maintained for two years and shall be available to the person that record is for subject upon request.

(B) The Police Department shall collect a \$7 fee to defray the cost of processing a request for release.

(C) The Police Department may not charge a fee for requests received from the Parent Locator Service of the Child Support Bureau of the Division of Family and Children or military background checks.

(D) The fees collected for requests for release or inspection of a limited criminal history shall be paid into the Local Law Enforcement Continuing Education Fund established by I.C. 5-2-8-2. (Ord. 2037, passed 5-8-06)

§ 37.04 CHARGES FOR AMBULANCE SERVICES.

(A) *Title.* This section and all ordinances supplemental or amendatory hereto shall be known as the “Emergency Medical Ambulance Service Ordinance of the City of Elwood, Indiana”.

(B) *Purpose.* The purpose and intent of this section is to prescribe requirements, and establish fees for the operations of an emergency medical ambulance service in the City of Elwood, Indiana, which is operated by the City of Elwood Fire Department.

(C) *Emergency medical ambulance service.*

(1) The Elwood Fire Department will operate and maintain an emergency ambulance service that provides both basic life support and advanced life support to the citizens of the city.

(2) This emergency medical ambulance service will be operated and maintained for medical emergencies only and not for pre-arranged medical visits, transportation to doctor's offices, clinics, convalescent transfers, or transportation of patients from hospitals back to their residence or extended care facility, unless duly authorized by the Fire Chief or his or her designee. The city's obligation is to only render emergency first aid and, if necessary, transport emergency patients to an authorized hospital.

(E) *Required training, certification, equipment, policies, and operational procedures.* All training, state certifications, equipment, supplies, policies, and operational procedures shall be governed by the laws of the State of Indiana, the rule of the Emergency Medical Services Commission, the sponsoring hospital, the physician providing medical direction and the rules, regulations, and standard operational guidelines of the Elwood Fire Department.

(F) *Ambulance service charges and fee structure.*

(1) The city operates an emergency medical ambulance service to safeguard and protect the life and public welfare of the Elwood community. The intent of this service is to care for the citizens of Elwood and offer competent emergency medical care.

(2) In order to provide and maintain the equipment, supplies, and certified personnel of a professional emergency medical ambulance service, it is necessary for the city to establish ambulance service fees.

(3) The city shall only charge a patient if the patient is transported by the Elwood Fire Department personnel or an Elwood Fire Department personnel assists with treatment on an ambulance of another agency while providing mutual aid.

(4) The Elwood Fire Department offers emergency medical care at three levels. The level of care shall be determined by an evaluation of the seriousness of the patient's injury or illness. The three levels of emergency care shall be as follows:

(a) *Basic life support (BLS).* When medically necessary, the provisions of basic life support services as defined by the State of Indiana Department of Homeland Security EMS Commission for the Emergency Medical Technician - Basic (EMT-Basic).

(b) *Advanced life support I (ALS) Advanced life support, level I (ALS I)*. When medically necessary, the provisions of advanced life support services is defined by the State of Indiana Department of Homeland Security EMS Commission for the advanced life support ambulance provider or supplier or furnishing of one or more ALS interventions. An ALS assessment is performed by an ALS crew and results in the determination that the patient's condition requires an ALS level of care, even if no other ALS intervention is performed. An ALS provider is defined as a provider whose staff has individuals trained to the level of EMT - basic advanced, EMT advanced, or EMT - paramedic as defined by the State of Indiana Department of Homeland Security EMS Commission. An ALS procedure is defined as a procedure beyond the scope of EMT -basic.

(c) Advanced life support II (ALS II) shall be defined as three or more medications by intravenous push/bolus or by continuous infusion excluding, crystalloid, hypotonic, isotonic, or hypertonic solutions (dextrose, normal saline, Ringer's lactate) not including intravenous fluids for the purpose of maintaining an IV access or provision of at least one of the following ALS procedures:

1. Manual defibrillation and/or synchronized cardioversion;
2. Endotracheal intubation;
3. Central venous line;
4. Cardiac pacing;
5. Chest decompression;
6. Surgical airway; or
7. Intraosseous line.

8. Aspirin and oxygen do not qualify a response as an ALS II level. However, three separate administrations of the same acceptable medical during a single transport do qualify as an ALS level II.

(5) The established fees for the levels of care shall be set at the following rates for the provision of such service:

<i>Level of Service</i>	<i>Resident</i>	<i>Non-Resident</i>
ALS emergency	\$450	\$650
ALS II emergency	\$550	\$850
ALS non-emergency	\$450	\$525

<i>Level of Service</i>	<i>Resident</i>	<i>Non-Resident</i>
BLS emergency	\$350	\$500
BLS non-emergency	\$350	\$500
Treatment no transportation	\$0.00	\$0.00
Oxygen	\$16	\$16

(6) (a) In addition to the rates for the level of care provided, the following fee shall be added as an additional charge: transport mileage \$ 8.75.

(b) When the transporting ambulance transports more than one patient in the same ambulance, the total mileage should be distributed equally among the patients being transported.

(G) Billing and payment responsibility.

(1) The procedures for billing and collection for services shall be prescribed by the Board of Public Works and Safety of the City of Elwood, Indiana, and administered by the Clerk-Treasurer of the City of Elwood, Indiana.

(2) It shall be the responsibility of the patient receiving emergency medical ambulance services or the patient’s legal representative to satisfy the charges for the services rendered.

(3) All billing shall be sent to the patient, the patient’s legal representative or named responsible part for the services rendered, except where federal and/or state law dictates differently.

(4) The city is not a network provider for any private insurance companies and, therefore, does not accept assignment for payment. In cases where employers and/or insurance carriers make only partial payments for services rendered, it shall be the responsibility of the patient or the patient’s legal representative to satisfy the remaining unpaid balance.

(H) Ambulance fees non-reverting fund. There is hereby established the Firefighting Equipment and Supplies, Ambulance Equipment and Supplies, and Building Non-Reverting Fund. Ten percent of the revenues generated by the aforementioned fees shall be deposited into the City General Fund, and the balance of the revenues shall be deposited into the herein established non-reverting fund. Expenditures may be made from this fund only upon proper appropriation by the Council.

(I) The following are exempt from any fees to be charged for services under this division: all city employees and immediate dependents of the city employees which include family members and dependents who reside with the employee and which the employee can include on their federal income tax return as an exemption. Retirees of the city who have worked over 20 years and their spouse are also exempt from fees under this division.

(Ord. 1959, passed 11-1-10; Am. Ord. 2234, passed 10-5-15; Am. Ord. 1959, passed 7-7-14)

§ 37.05 RESPONSIBILITY FOR MEDICAL BILLS WHILE IN CUSTODY.

All inmates and detainees while in the custody of the Elwood Police Department or in the Elwood City Jail shall be individually responsible for their own medical bills for medical treatment while in the custody of the Elwood Police Department or in the Elwood City Jail.

(ord. 2112, passed 5-2-11)

TITLE V: PUBLIC WORKS

Chapter

50. GARBAGE

51. WATER

52. SEWERS

53. INDUSTRIAL WASTE

CHAPTER 50: GARBAGE

Section

- 50.01 Definitions
- 50.02 Collection authorization
- 50.03 Appointment of Superintendent
- 50.04 Regulations
- 50.05 Notice to remove
- 50.06 Hauling prohibited
- 50.07 Sanitation services

- 50.99 Penalty

§ 50.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

GARBAGE. Rejected food wastes and every waste accumulation of animal, fruit or vegetable matter, used or intended for food or that attends the preparation, use, cooking, dealing in or storing of meat, fish, fowl, fruit or vegetables.

RUBBISH. Such matter as ashes, cans, metalware, broken glass, crockery, dirt, sweepings, bones, wood, grass, weeds or litter of any kind.
(‘66 Code, § 4-6-1-1) (Ord. 1172, passed 10-3-66)

§ 50.02 COLLECTION AUTHORIZATION.

The Board of Public Works and Safety of the city is hereby authorized and empowered to collect and dispose of all garbage and rubbish within the city.
(‘66 Code, § 4-6-1-1) (Ord. 1172, passed 10-3-66)

§ 50.03 APPOINTMENT OF SUPERINTENDENT.

The Board is hereby authorized and empowered to appoint a Superintendent of Garbage and Rubbish Collection and Disposal to supervise the collection and disposal, and the Board is further authorized and

empowered to employ all necessary labor and to procure all necessary vehicles and equipment to properly administer the provisions of this chapter.

('66 Code, § 4-6-1-3) (Ord. 1172, passed 10-3-66)

§ 50.04 REGULATIONS.

(A) The Board of Public Works and Safety is hereby authorized, subject to the approval of the Common Council, to prescribe and promulgate regulations providing methods to be used in the storage, collection and disposal of all garbage and rubbish.

(B) The following are regulations for the collecting of garbage in accordance with division (A) above:

(1) Each patron producing garbage for municipal collection shall use garbage containers of a capacity not to exceed 40 gallons or strong plastic bags designed for garbage collection. Each container or bag placed for collection shall not exceed 30 pounds.

(2) Tree limbs shall be cut in lengths not to exceed three feet and tied in bundles not to exceed two feet in diameter.

(3) Garbage shall be wrapped and placed in the container with cans and trash.

(C) Any and all individuals, residents, or business participating in citywide garbage pick up shall not place for collection any of the following items: liquids, chemicals, pesticides or fertilizers, oils, batteries, whole drums, hazardous waste, medical waste, hot loads, whole tires, dead animals or carcasses, yard waste, furniture, appliances, fluorescent bulbs or remodeling debris.

(1) For purposes of enforcement, the owner of the real estate upon which the violation takes place is presumed to have knowledge of the violation and is strictly liable therefor.

(2) Upon discovery of hazardous materials not being disposed of in a properly hardened container as required herein, the city may suspend further garbage pick up for that property and that owner wherever the owner may have real estate within the city in a length of time as determined by the Mayor. The first violation of this division (C) can result in suspension of garbage pick up privileges to the owner and/or the property for six months. The second violation can result in suspension of garbage pick up privileges to the owner and or the property for up to one year. The third violation can result in a permanent suspension of garbage pick up privileges to the owner and or the property.

('66 Code, § 4-6-1-2) (Ord. 1172, passed 10-3-66; Am. Ord. 1989, passed 6-5-03; Am. Ord. 1172, passed 6-15-09) Penalty, see § 50.99

§ 50.05 NOTICE TO REMOVE.

It shall be unlawful for any person, firm or corporation owning, renting, occupying or controlling all or any part of any room, house, building, tenement, premises or real estate, within the corporate limits of the city, to fail, neglect or refuse, for a period of 24 hours, to remove or cause to be removed any and all garbage, refuse, manure, trash, ashes, tin cans or any other similar matter from the place, property or premises so owned, rented, occupied or controlled or from the street, highway or alley abutting thereon.

('66 Code, § 4-6-1-5) (Ord. 1172, passed 10-3-66) Penalty, see § 50.99

§ 50.06 HAULING PROHIBITED.

(A) Any corporation, firm, partnership or individual hauling junk, trash, trash wire, waste paper, boxes or cartons shall haul the same in an enclosed conveyance or provide a covering for the conveyance in order to keep the junk, trash, trash wire, waste paper, boxes and cartons from becoming separated from the conveyance while the same is being operated within the corporate limits of the city.

(B) The provisions of the division (A) above shall also apply to conveyances within one mile of the city limits.

('66 Code, § 4-6-1-4) (Ord. 1172, passed 10-3-66) Penalty, see § 50.99

§ 50.07 SANITATION SERVICES.

Any and all owners, tenants, or occupants of residential and commercial property are eligible for garbage and rubbish collection by the city. Items that will be collected include "garbage" and "rubbish" as defined in § 50.01.

(A) *Collection fees.* Fees for garbage and rubbish collection shall be as follows.

(1) For each single family dwelling or housing unit, \$12 per month.

(2) For a two- or more family dwelling, \$12 per dwelling unit per month.

(3) Commercial properties and dwellings containing three or more units may opt out of city collection and use private collection and not pay any fees to the city for collection.

(4) Commercial collection rates will be determined on a case by case basis by the Board of Public Works, but shall be no less than \$30 per month.

(B) *Late charges.* Collection fees, as specified in division (A) of this section, shall be added to the user's water, sewage, and sanitation charges and shall be payable as are bills for water, sewage, and sanitation service. Payments not made within 15 days of the billing date will have a late charge of 10% for each month in which the payment remains delinquent. Late charges will be assessed only on the monthly collection fees and not on any accrued late charges from prior months. If any payment remains delinquent for more than two months, service will be discontinued and an ordinance violation will be issued. To reinstate service, all past due charges must be paid in full, plus a reinstatement charge equal to one month's flat fee.

(C) *Notification to discontinue service.* If any service charge remains unpaid for a period of two months, the charges may be certified to the Auditor of Madison County for placement upon the tax duplicate by the Auditor and collected as taxes are collected as provided in I.C. 18-5-10-77.

(D) *Other refuse disposal.* No person shall burn garbage or deposit rubbish on any property located within the city except as provided herein. No person shall accept garbage or rubbish for disposal from a residence or commercial establishment other than their own.

(E) *Other provisions.*

(1) Customers shall deposit garbage or rubbish for collection on the date and in the location which the Common Council may from time to time establish by resolution. The Common Council may also establish the number, size, kind, and weight of trash containers to be collected. Each customer shall be responsible to keep his or her garbage or rubbish collection site in a neat and clean manner.

(2) This chapter shall not pertain to the hauling of garbage or rubbish by a building contractor incident to the construction or demolition of any structure.

(3) Strewn trash is the responsibility of the residents.

(4) Private haulers may provide services to commercial establishments within the city at the election of the commercial establishment.

(5) Any private hauler of refuse must obtain a permit from the city, which can be obtained through the Building Commissioner, in order to provide such services within the city for an annual fee of \$100.

(6) Garbage or rubbish collection may be provided by the city to homes outside the city limits, but currently served by city utilities at a monthly cost of \$15 for residential units.

(7) All collection costs not covered herein will be reviewed on an individual basis.
(Ord. 1172, passed 6-15-09) Penalty, see § 50.99

§ 50.99 PENALTY.

The penalty for violation of this chapter shall be according to § 10.99 of this code. Violation of § 50.04(C) of this chapter may also include reimbursement to the city or to the city employee physically injured by the hazardous materials being regulated pursuant to § 50.04(C). These penalties shall be in addition to and shall not in any way limit any civil liability created under § 50.04(C). (Ord. 1989, passed 6-5-03)

CHAPTER 51: WATER

Section

- 51.01 Exclusive jurisdiction of water utility
- 51.02 Control of cross connections
- 51.03 Rates and charges
- 51.04 Utility removed from state jurisdiction

Cross-reference:

Bad Debt and Uncollectible Accounts Receivable Write-off Policies and Procedures for Municipal Water Utility, see § 35.07

§ 51.01 EXCLUSIVE JURISDICTION OF WATER UTILITY.

(A) The municipal water utility shall have the exclusive jurisdiction and control for all matters concerning the supplying of water to residences of the city: maintaining and repairing existing water lines, installing new water lines, reading water meters and billing for services provided, including collection thereof.

(B) Division (A) shall not limit the scope and authority of the municipal water utility in carrying out its duties and functions as such and the municipal water utilities shall continue to conduct its services, functions and duties as they currently exist and as allowed by state law.

(C) The duties, functions and services provided by the municipal water utility of the city shall not be conducted by any other individuals, firms, corporations or entities, without the expressed written permission of the Board of Public Works Safety and the Common Council of the city.
(Ord. 1843, passed 7-10-95)

§ 51.02 CONTROL OF CROSS CONNECTIONS.

(A) *Definition.* For the purpose of this chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

CROSS CONNECTION. Any physical connection or arrangement between two otherwise separate systems, one of which contains potable water from the city water system and the other, water from a private source, water of unknown or questionable safety, steam, gases or chemicals, whereby there may be a flow from one system to the other, the direction of flow depending on the pressure differential between the two systems.

(B) *Cross connections and interconnections prohibited.* No person, firm or corporation shall establish or permit to be established or maintain or permit to be maintained any cross connection. No interconnection shall be established whereby potable water from a private, auxiliary or emergency water supply other than the regular public water supply of the city may enter the supply or distribution system of the municipality, unless such private, auxiliary or emergency water supply and the method of connection and use of such supply shall have been approved by the Elwood Water Utility and by the Environmental Management Board in accordance with Rule 320 I.A.C. 8-10.

(C) *Inspections.* It shall be the duty of the Elwood Utility to cause inspections to be made of all properties served by the public water system where cross connections with the public water system is deemed possible. The frequency of inspections and reinspections based on potential health hazards involved shall be as established by the Elwood Utility.

(D) *Request for entry.*

(1) Upon presentation of credentials, the representative of the Elwood Utility shall have the right to request entry at any reasonable time to examine any property served by a connection to the public water system of Elwood for cross connections.

(2) On request, the owner, lessee or occupant of any property so served shall furnish to the inspection agency any pertinent information regarding the piping system or systems on such property. The refusal of access or refusal of requested pertinent information shall be deemed evidence of the presence of cross connections.

(E) *Discontinuation of cross connections.*

(1) The Elwood Water Utility is hereby authorized and directed to discontinue water service to any property wherein any connection in violation of this section exists, and to take such other precautionary measures deemed necessary to eliminate any danger of contamination of the public water system. Water service shall be discontinued only after reasonable notice is served on the owner, lessee or occupants of the property or premises where a violation is found.

(2) Water service to such property shall not be restored until the cross connection(s) has been eliminated in compliance with the provisions of this section. A reasonable notice is deemed to be 30 days for purpose of this section.

(F) *Immediate action.* If it is deemed by the Elwood Utility that a cross connection or an emergency endangers public health, safety or welfare and requires immediate action, and a written finding to that effect is filed with the Clerk-Treasurer of the city and delivered to the consumer's premises, service may be immediately discontinued. The consumer shall have an opportunity for hearing within ten days of such an emergency discontinuance.

(G) *Backflow preventers.*

(1) All consumers using toxic or hazardous liquids, all hospitals, mortuaries, wastewater treatment plants, laboratories and all other hazardous users shall install and maintain a reduced-pressure-

principle backflow preventer in the main water line serving each building on the premises. The backflow preventer must be installed in an easily accessible location not subject to flooding or freezing.

(2) Plants or facilities as listed need a backflow prevention device:

Aircraft and missile plants

Automotive plants

Auxiliary water systems

Beverage bottling plants and breweries

Buildings: hotels, apartment houses, public and private buildings or any other structures having unprotected cross connections, with the exception of single-family residential structures with existing cross connections; all single-family residential structures that develop cross connections after passage of this section will be subject to this division and the devices will be provided by the city

Canneries, packing houses and reduction plants

Car wash facilities

Chemical plants: manufacturing, processing, compounding or treatment

Chemically contaminated water systems

Civil works

Diaries and cold storage plants

Film laboratories

Fire systems

Hospitals, medical buildings, sanitariums, morgues, mortuaries, autopsy facilities, nursing and convalescent homes and clinics

Irrigation systems or premises having separate systems: parks, playgrounds, cemeteries,

Golf courses, schools, estates, ranches, etc.

Laundries and dye works

Metal manufacturing, cleaning, processing and fabricating plants

Motion picture studios

Multi-storied buildings

Multiple services: interconnected

Oil and gas production, storage or transmission properties

Paper and paper products plant

Plating and power plants

Radioactive materials or substances: plants or facilities

Restricted, classified or other closed facilities

Rubber plants: natural or synthetic

Sand and gravel plants

Schools and colleges

Sewage and storm drain facilities

Solar heating systems: direct and auxiliary

Waterfront facilities and industries

(Ord. 1741, passed 6-3-91)

§ 51.03 RATES AND CHARGES.

(A) *Meter rates per month.* Rates and charges based on the use of and services rendered by the city system shall be as established in the most recent rate ordinance, which is hereby adopted by reference, as amended from time to time by the Common Council. The rate ordinance shall be available for public inspection in the office of the City Clerk.

('66 Code, § 6-1-2-1)

(B) *Minimum monthly charge.* The minimum monthly charge shall be as established in the most recent rate ordinance, which is hereby adopted by reference, as amended from time to time by the Common Council. The rate ordinance shall be available for public inspection in the office of the City Clerk.

(2) In no event shall the monthly minimum for metered or unmetered services be less than \$4.79 per month.

('66 Code, § 6-1-2-2)

(C) *Rates outside the city.* For water rates for customers outside the city limits, add 25% to rates otherwise. ('66 Code, § 6-1-2-3)

(D) *Rate payment.* All bills shall be due and payable monthly and bills unpaid more than 15 days following the date of billing shall include a collection charge of 10% on the first \$3 of unpaid billing and 3% on the balance of the unpaid billing in excess of \$3 plus attorney's fees and cost of collection. An additional service charge of \$20 shall be collected for turning off and turning on thereafter any water service which is delinquent in payments. ('66 Code, § 6-1-2-4)

(E) *Special charges.*

(1) The amount to be paid for fire hydrant services by users having private fire hydrants shall be payable monthly. The rate shall be as established in the most recent rate ordinance, which is hereby adopted by reference, as amended from time to time by the Common Council. The rate ordinance shall be available for public inspection in the office of the City Clerk.

(2) The amount to be paid by the city for fire hydrant rental shall be \$207.90 per hydrant per year, payable monthly.

(3) Water furnished to temporary users, such as contractors, etc., shall be charged on the basis of the above consumption rates as estimated by the Waterworks Superintendent.

(4) Water supplied for railroad use may be charged for on such terms as shall be fixed by specific contract approved by the Common Council and the Public Service Commission of Indiana.

(5) Water furnished for use by automatic sprinkler systems shall be charged for at rates as established in the most recent rate ordinance, which is hereby adopted by reference, as amended from time to time by the Common Council. The rate ordinance shall be available for public inspection in the office of the City Clerk.

('66 Code, § 6-1-2-5)

(F) *Connection charges.* Connection charges shall be as established in the most recent rate ordinance, which is hereby adopted by reference, as amended from time to time by the Common Council. The rate ordinance shall be available for public inspection in the office of the City Clerk.

('66 Code, § 6-1-2-6)

(G) *Special funds.* Funds, in lieu of taxes, shall be included in the revenues of the municipal water utility and shall be transferred to the city's general fund to off-set city fire hydrant rental. ('66 Code, § 6-1-2-7)

(Ord. 1540, passed - -81; Am. Ord. 2171, passed 6-3-13)

§ 51.04 UTILITY REMOVED FROM STATE JURISDICTION.

The city water utility is hereby removed from the jurisdiction of the Indiana Utility Regulatory Commission.

(Ord. 1948, passed 5-1-2000)

CHAPTER 52: SEWERS

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GENERAL PROVISIONS**§ 52.001 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BOARD. The Board of Public Works and Safety of the city, or any duly authorized officials acting in its behalf.

BIOCHEMICAL OXYGEN DEMAND or **BOD.** The quantity of dissolved oxygen in milligrams per liter required during stabilization of the decomposable organic matter by aerobic biochemical action under standard laboratory procedures for five days at 20° C. The laboratory determinations shall be made in accordance with procedures set forth in *Standard Methods*.

BUILDING or **HOUSE DRAIN.** That part of the lowest horizontal piping of a building drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to a point approximately five feet outside the foundation wall of the building.

BUILDING or **HOUSE SEWER.** The pipe which is connected to the building or house drain at a point approximately five feet outside the foundation wall of the building and which conveys the building's discharge from that point to the public sewer or other place of disposal.

CHEMICAL OXYGEN DEMAND or **COD.** A measure of the oxygen equivalent of that portion of the organic matter in a sample that is susceptible to oxidation by a strong chemical oxidant. The laboratory determination shall be made in accordance with procedures set forth in *Standard Methods* below.

CITY. The City of Elwood, Indiana, or any duly authorized officials acting in its behalf.

COMBINED SEWER. A sewer intended to receive both waste water and storm or surface water.

COMPATIBLE POLLUTANT.

(1) Biochemical oxygen demand, suspended solids, pH and fecal coliform bacteria, plus pollutants identified in the NPDES permit if the treatment works was designed to treat such pollutants, and in fact does remove pollutants to a substantial degree. The term substantial degree is not subject to precise definition, but generally contemplates removals in the order of 80% or greater.

(2) Minor incidental removals in the order of 10% to 30% are not considered substantial. Examples of the additional pollutants which may be considered compatible include:

- (a) Chemical oxygen demand;

- (b) Total organic carbon;
- (c) Phosphorus and phosphorus compounds;
- (d) Nitrogen and nitrogen compounds; and

(e) Fats, oils and greases of animal or vegetable origin (except as prohibited where these materials would interfere with the operation of the treatment works.

EFFLUENT. The water, together with any wastes that may be present, flowing out of a drain, sewer, receptacle or outlet.

FECAL COLIFORM. Any of a number of organisms common to the intestinal tract of man and animals, whose presence in sanitary sewage is an indicator of pollution.

FLOATABLE OIL. Oil, fat or grease in a physical state, such that will separate by gravity from wastewater by treatment in a pretreatment facility approved by the city.

GARBAGE. Any solid wastes from the preparation, cooking or dispensing of food and from the handling, storage or sale of produce.

HYDROGEN ION CONCENTRATION. See definition of “pH.”

INCOMPATIBLE POLLUTANT. Any pollutant that is not defined as a compatible pollutant, including non-biodegradable dissolved solids.

INDUSTRIAL SEWAGE. Any solid, liquid, gaseous substance or form of energy discharged, permitted to flow or escaping from any industrial, manufacturing, commercial or business process or from the development, recovery or processing of any natural resource carried on by any person as defined below, exclusive of sanitary sewage.

INFILTRATION. The water entering a sewer system, including building drains and sewers, from the ground, through such means as, but not limited to, defective pipes, pipe joints, connections or manhole walls. ***INFILTRATION*** does not include and is distinguished from inflow.

INFLOW. The water discharge into a sewer system including building drains and sewers from such sources as, but not limited to: roof leaders, cellars, yard and area drains, foundation drains, unpolluted cooling water discharges, drains from springs and swampy areas, manhole covers, cross connections from storm sewers and combined sewers, catch basins, storm waters, surface run-off, street wash waters or drainage. ***INFLOW*** does not include, and is distinguished from infiltration.

INFILTRATION INFLOW. The total quantity of water from both infiltration and inflow without distinguishing the source.

INSPECTOR. The person or persons duly authorized by the city through the Board of Public Works and Safety, to inspect and approve the installation of building sewers and their connection to the public sewer system.

MAJOR CONTRIBUTING INDUSTRY. An industry that:

- (1) Has a flow of 50,000 gallons or more per average work day;
- (2) Has a flow greater than 5% of the flow carried by the municipal system receiving the waste;
- (3) Has in its waste a toxic pollutant in toxic amounts as defined in standards issued under 33 USC 1251, *et seq.*; or
- (4) Is found by the permit issuance authority, in connection with the issuance of an NPDES permit to the publicly-owned treatment works receiving the waste, to have significant impact, either singly or in combination with other contributing industries, on that treatment works or upon the quality of effluent from that treatment works.

MAY. Is permissible.

NORMAL DOMESTIC SEWAGE. The same meaning as defined in § 52.065.

NPDES PERMIT. A permit issued under the National Pollutant Discharge Elimination System for discharge of wastewaters to the navigable waters of the United States pursuant to 33 USC 1251, *et seq.*

OUTLET. Any **OUTLET**, natural or constructed, which is the point of final discharge of sewage or of treatment plant effluent into any watercourse, pond, ditch, lake or other body of surface or ground water.

PERSON. Any and all persons, natural or artificial including any individual, firm, company, municipal or private corporation, association, society, institution, enterprise, governmental agency or other entity.

pH. The logarithm (to the base ten) of the reciprocal of the hydrogen ion concentration of a solution expressed in gram/atoms per liter of solution.

PRETREATMENT. The treatment of industrial sewage from privately-owned industrial sources prior to introduction into a public treatment works.

PRIMARY SEWER MAIN. For purposes of this chapter shall mean the public sewer main which is required to transport sewage from the property line of the nearest prospective customer to the proposed point of connection at the sewage work's existing sewer main.

PROPERLY SHREDDED GARBAGE. The wastes from the preparation, cooking and dispensing of food that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than ½-inch in any dimension.

RECEIVING STREAM. The watercourse, stream or body of water receiving the waters finally discharged from the sewage treatment plant.

SANITARY SEWAGE. Sewage discharged from the sanitary conveniences of dwellings (including apartment houses, hotels and motels), office buildings, factories or institutions and free from storm water, surface water and industrial wastes.

SECONDARY SEWER MAIN. The public sewer main which is required to provide service from a prospective customer to the primary sewer main.

SEWER SERVICE CHARGE. Includes the revenue systems to cover operation, maintenance and replacement (OM&R) and local capital costs, along with any surcharges associated with either or both of these revenue systems.

SEWAGE. The water-carried wastes from residences, business buildings, institutions and industrial establishments, singular or in any combination, together with such ground, surface and storm waters as may be present.

SEWAGE TREATMENT PLANT. The arrangement of devices, structures and equipment used for treating and disposing of sewage and sludge.

SEWAGE WORKS. The organization and all facilities for collecting, transporting, pumping, treating and disposing of sewage and sludge. Namely the sewerage system and the treatment plant.

SEWER. A pipe or conduit for carrying sewage or other waste liquids.

(1) ***PRIVATE SEWER.*** A sewer which is not owned by a public authority.

(2) ***PUBLIC SEWER.*** A primary sewer or secondary sewer in which all owners of abutting property have equal rights and which is controlled by the city's sewage works.

(3) ***SANITARY SEWER.*** A sewer which carries sewage and to which storm, surface, ground waters and unpolluted industrial waste waters are not intentionally admitted.

(4) ***STORM SEWER.*** A sewer which carries storm and surface water drainage but excludes sewage.

SEWERAGE SYSTEM or SEWAGE SYSTEM. The network of sewers and appurtenances used for collecting, transporting and pumping sewage to the sewage treatment plant.

SHALL. Is mandatory.

SLUDGE. Any discharge of water, sewage or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than 15 minutes more than five times the average 24-hour concentration of flows during normal operation.

STANDARD METHODS. The laboratory procedures set forth in the latest edition, at the time of analysis, of *Standard Methods for the Examination of Water and Wastewater*, prepared and published jointly by the American Public Health Association, the American Water Works Association and the Water Pollution Control Federation, and *Guidelines Establishing Test Procedures for Analysis of Pollutants*, 40 C.F.R. Part 136, published in the Federal Register on October 16, 1973.

SUPERINTENDENT. The Superintendent of the Sewage Department of the city or his duly authorized representative.

SURCHARGE. The extra charges for sewerage service assessed customers whose sewage is of such a nature that it imposes upon the city's sewage works a burden greater than that covered by the basic service charge.

SUSPENDED SOLIDS. Solids which either float on the surface of or are in suspension in water, sewage or other liquid and which are removable by laboratory filtration. Their concentration shall be expressed in milligrams per liter. Quantitative determinations shall be made in accordance with procedures set forth in *Standard Methods*.

TOTAL REVENUE. For purposes of this chapter, that revenue obtained from monthly minimum billing for the use of and service rendered by the sewage works and does not include front foot assessments, permit or inspection fees or other charges.

TOTAL SOLIDS. The sum of suspended and dissolved solids.

TOXIC AMOUNT. Concentrations of any pollutant or combination of pollutants, which upon exposure to or assimilation into any organism will cause adverse effects, such as cancer, genetic mutations and physiological manifestations, as defined in standards issued pursuant to 33 USCA 1251, *et seq.*

UNPOLLUTED WATER. Water of quality equal to or better than the effluent criteria in effect, or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.

VOLATILE ORGANIC MATTER. The material in the sewage solids transformed to gases or vapors when heated 550° C., for 15 to 20 minutes.

WATERCOURSE. A channel in which a flow of water occurs either continuously or intermittently. ('66 Code, § 6-2-1-1) (Ord. 1498, passed - -81)

§ 52.002 STATE AND FEDERAL COMPLIANCE.

All provisions of this chapter and limits set herein shall comply with any applicable state and/or federal requirements now or hereafter in effect.

('66 Code, § 6-2-1-61) (Ord. 1498, passed - -81)

§ 52.003 VIOLATIONS.

(A) Any person found to be violating any provision of this chapter except § 52.046 (C) shall be served by the city with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall within the period of time stated in such notice, permanently cease all violations.

(B) Any person who shall continue any violation beyond the time limit provided for in division (A) above shall be guilty of a misdemeanor. Each day in which any such violation shall continue shall be deemed a separate offense.

(C) Any person violating any of the provisions of this chapter shall become liable to the city for any expense, loss or damage occasioned the city or downstream users by reason of such violation.

('66 Code, § 6-2-1-62) (Ord. 1498, passed - -81) Penalty, see § 10.99

CONNECTION REQUIREMENTS**§ 52.015 CERTAIN DISPOSAL FACILITIES PROHIBITED.**

Except as hereinafter provided in § 52.029, no person shall construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage.

('66 Code, § 6-2-1-5) (Ord. 1498, passed - -81) Penalty, see § 10.99

§ 52.016 CONNECTION TO PUBLIC SEWER REQUIRED.

The owner of all houses, buildings or properties used for human occupancy employment, recreation or other purposes, situated within the city and abutting on any street, alley or right-of-way in which there is now located or may in the future be located a public sanitary or combined sewer of the city, is hereby required at his expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this chapter, provided that the public sewer is within 150 feet of the property line.

('66 Code, § 6-2-1-6) (Ord. 1498, passed - -81) Penalty, see § 10.99

§ 52.017 UNAUTHORIZED USE.

No unauthorized person shall uncover, make any connections with, open into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Board of Public Works and Safety.

(‘66 Code, § 6-2-1-7) (Ord. 1498, passed - -81) Penalty, see § 10.99

§ 52.018 PERMIT REQUIRED; APPLICATION.

No person shall make any connection with the public sewers or drains, or with any extension or connection previously made, without first obtaining a written permit from the Board of Public Works and Safety. The application for such permit must be made in writing not later than the day previous to the opening of the street by the owner or authorized agent of the property to be drained, and must be accompanied by a clear description of the premises, the name of the person employed to do the work and the permit fee in the amount determined by the Board. All such applications must be filed with the Clerk-Treasurer.

(‘66 Code, § 6-2-1-8) (Ord. 1498, passed - -81) Penalty, see § 10.99

§ 52.019 OWNER RESPONSIBLE FOR INSTALLATION.

All costs and expenses incident to the installation and connection of the building sewer shall be borne by the owner. The owner or the person installing the building sewer for the owner shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation.

(‘66 Code, § 6-2-1-9) (Ord. 1498, passed - -81)

§ 52.020 SEPARATE BUILDING SEWER; EXCEPTION.

(A) A separate and independent building sewer shall be provided for every building; except where two buildings are in close proximity and no private sewer is available or can be constructed to the second building through an adjoining alley, court, yard or driveway, the building sewer from the front building may be extended to the second building and the whole considered as one building sewer. (‘66 Code, § 6-2-1-10)

(B) Old building sewers may be used in connection with new buildings only when they are found on examination and test by the Superintendent to meet all requirements of this chapter. (‘66 Code, § 6-2-1-11)

(Ord. 1498, passed - -81)

§ 52.021 BUILDING SEWERS; MATERIALS AND SPECIFICATIONS.

(A) *Materials.* The building sewer shall be cast iron soil pipe, ASTM specification or equal, verified clay sewer pipe, ASTM specification or equal, or other suitable material as governed by the *Indiana Plumbing Rules and Regulations*, most current edition, as amended of this chapter and any provisions thereof which may be amendatory thereof or supplemental thereto from time to time hereafter, and as shall be approved by the Superintendent. Joints shall be tight and waterproof. Any part of the building sewer that is located within ten feet of water service pipe shall be constructed of cast iron soil pipe with leaded joints. Cast iron pipes with leaded joints may be required by the Superintendent where the building sewer is exposed to damage by tree roots. If installed in filled or unstable ground, the building sewer shall be of cast iron soil pipe, except that nonmetallic material may be accepted if laid on a suitable concrete bed or cradle as approved by the Superintendent. ('66 Code, § 6-2-1-12)

(B) *Size.* The size and slope of the building sewers shall be subject to the approval of the Superintendent but in no event shall the diameter be less than six inches for single family or duplex residential units and not less than six inches for all other uses. The slope of the six-inch pipe shall be not less than ¼-inch per foot or sufficient slope to maintain a two feet per second velocity in the sewer. ('66 Code, § 6-2-1-13)

(C) *Elevation.* Whenever possible the building sewer shall be brought to the building at an elevation below the basement floor. No building sewer shall be laid parallel to or within three feet of any bearing wall, which might thereby be weakened. The depth shall be sufficient to afford protection from frost. The building sewer shall be laid at a uniform grade and in straight alignment insofar as possible. Changes in direction shall be made only with properly curved pipes and fittings. ('66 Code, § 6-2-1-14) (Ord. 1498, passed - -81)

§ 52.022 LOW SEWER REQUIREMENT.

In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such drains shall be lifted by approved artificial means and discharged to the building sewer. ('66 Code, § 6-2-1-61) (Ord. 1498, passed - -81)

§ 52.023 EXCAVATIONS.

(A) *Excavations.* All excavations required for the installation of a building sewer shall be open trench work, unless otherwise approved by the Superintendent. Pipe laying and backfill shall be placed until the work has been inspected by the Superintendent or his representative. ('66 Code, § 6-2-1-16)

(B) *Guards and restorations.* All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways

and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the city. ('66 Code, § 6-2-1-20)

(Ord. 1498, passed - -81)

Cross-reference:

Reconstruction of sidewalks, see § 96.05

Streets and Sidewalks, see Chapter 96

§ 52.024 JOINT SPECIFICATIONS.

All joints and connections shall be made gas tight and water tight, and as governed by the *Indiana Plumbing Rules and Regulations*, most current edition, as amended, and any provisions thereof which may be amendatory thereof or supplemental thereto from time to time hereafter.

('66 Code, § 6-2-1-17) (Ord. 1498, passed - -81) Penalty, see § 10.99

§ 52.025 TAPPING INTO SEWER.

The connection of the building sewer into the public sewer shall be made at the "Y" branch, if such branch is available at a suitable location. If the public sewer does not have a properly approved tapping saddle in the public sewer at the location specified by the Superintendent. The tapping saddle shall be installed in neatly tapped hole cut into the public sewer; the connection between the tapping saddle and public sewer shall be secured by the use of epoxy compound. The centerline of the building sewer at the tapping saddle shall be at or above the centerline of the public sewer. A smooth, neat joint shall be made and the connection made secure and watertight. Special fittings may be used for the connection only when approved by the Superintendent.

('66 Code, § 6-2-1-18) (Ord. 1498, passed - -81)

§ 52.026 CONNECTION SUPERVISION.

The applicant for the building sewer permit shall notify the Superintendent 24 hours in advance of when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the Superintendent or his representative.

('66 Code, § 6-2-1-19) (Ord. 1498, passed - -81)

§ 52.027 NONCONFORMING CONNECTION.

Any connection made contrary to the provisions of this chapter shall be removed when required by the Board of Public Works and Safety.

('66 Code, § 6-2-1-21) (Ord. 1498, passed - -81)

§ 52.028 LIMITED CONNECTIONS.

No proposed connection or inlet shall be permitted if, in the opinion of the Board of Public Works and Safety and/or the Superintendent such inlet and connection would overburden such sewer. ('66 Code, § 6-2-1-22) (Ord. 1498, passed - -81)

§ 52.029 PRIVATE SEWERS.

(A) *Use.* Where a public sanitary or combined sewer is not available under the provisions of § 52.016, the building sewer shall be connected to a private sewage disposal system complying with the provisions of §§ 52.002 and 52.051 and this section, inclusive. ('66 Code, § 6-2-1-48)

(B) *Standards.* At any house, building or property used for human occupancy, employment, recreation or other purposes, situated within the city, where there is installed a water carriage sewage disposal system which is not connected to a proper public sewer system, there shall be established, installed or constructed and maintained at no expense to the city, a private sewage disposal system which shall comply with the recommendations of the Indiana State Board of Health. ('66 Code, § 6-2-1-49)

(C) *Privy.* At any house, building or property used for human, occupancy, employment, recreation or other purposes, situated within the city, where there is installed a privy, the privy shall be of the sanitary type and shall be constructed and maintained at no expense to the city to comply with the recommendations of the Indiana State Board of Health. ('66 Code, § 6-2-1-50)

(D) *Construction.* All private residential sewage disposal systems and privies shall be installed, constructed and maintained at no expense to the city in an approved manner as described and illustrated by the Indiana State Board of Health. ('66 Code, § 6-2-1-51)

(E) *Defective private system.* Should any defect occur in any private water carriage sewage disposal system or privy which would cause the sewage disposal system or privy to fail to meet the requirements in divisions (B), (C) and (D), the defect shall be corrected immediately by the owner or agent of the owner, occupant or agent of the occupant at no expense to the city. Failure on the part of the owner or agent of the owner, occupant or agent of the occupant to do so shall be a violation of this chapter and he shall be subject to the penalties prescribed in § 52.003. ('66 Code, § 6-2-1-52)

(F) *Public sewer connection required.* Wherever a public sewer becomes available to a house, building or property used for human occupancy, employment, recreation or other purposes, served by a private sewage disposal system or privy as provided for in § 52.016, situated within the city, direct connection shall be made to the public sewer, and any septic tanks, seepage pits, privy pits and similar sewage disposal and treatment facilities shall be abandoned and filled in a safe and sanitary manner. ('66 Code, § 6-2-1-53)

(G) *Compliance.* Within 30 days after receiving an official order in writing from the Superintendent, the owner, agent of the owner, the occupant or the agent of the occupant of the property shall comply with the provisions of this chapter set forth in the official order of the Superintendent,

except as provided in division (D) above. The official order shall be served on the owner and the occupant or an the owner has assumed the duty of complying with the provisions of the official order. ('66 Code, § 6-2-1-54)

(H) *Application for permit.*

(1) Before commencement of construction of a private sewage disposal system or privy the owner or agent of the owner shall first obtain a written permit from the Board of Public Works and Safety. The application for such permit shall be made to the Clerk-Treasurer on a form furnished by the city, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the Board of Public Works and Safety. A permit and inspection fee in an amount determined by the Board shall be paid to the Clerk-Treasurer at the time the application is filed. ('66 Code, § 6-2-1-55)

(2) A permit for a private sewage disposal system or privy shall not become effective until the installation is completed to the satisfaction of the Superintendent. He shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the Superintendent when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within 48 hours of the receipt of notice by the Superintendent. ('66 Code, § 6-2-1-56)

(Ord. 1498, passed - -81) Penalty, see § 10.99

REGULATIONS

§ 52.040 DISPOSITION OF WASTE AND WASTEWATER.

(A) *Waste.* It shall be unlawful for any person to place, deposit or permit to be deposited in an unsanitary manner upon public or private property within the city of Elwood, Indiana, or in any area under the jurisdiction of the city, any human or animal excrement, garbage or other objectionable waste. ('66 Code, § 6-2-1-2)

(B) *Wastewater.* No person shall place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the jurisdiction of the city, any wastewater or other polluted waters except where suitable treatment has been provided in accordance with provisions of this chapter - and the NPDES permit. ('66 Code, § 6-2-1-3)
(Ord. 1498, passed - -81) Penalty, see § 10.99

§ 52.041 CERTAIN DISCHARGES PROHIBITED.

It shall be unlawful to discharge to any natural outlet within the city, or in any area under the jurisdiction of the city, any sanitary sewage, industrial waste or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this subchapter. ('66 Code, § 6-2-1-3) (Ord. 1498, passed - -81) Penalty, see § 10.99

§ 52.042 STORM WATER AND OTHER POLLUTED DRAINAGE.

(A) Storm water and any other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the Superintendent. Industrial cooling water or unpolluted process waters may be discharged upon approval of the Superintendent and the State of Indiana into a storm sewer or natural outlet. ('66 Code, § 6-2-1-23)

(B) From and after the effective date of Ordinance No. 1663, no additional storm water, ground water or field tile discharges shall be allowed to be discharged into the combined sewer collection system.

(C) The Common Council hereby resolves that the impact of storm water runoff from all developed and developing territory located within the city should be considered, in private and public projects alike, by weighing the risks, benefits and costs to both the property owners affected and the general public as a whole. (Ord. 1498, passed - -81; Am. Ord. 1663, passed 5-4-87; Am. Ord. 1969, passed 5-7-01) Penalty, see § 10.99

§ 52.043 PUBLIC SEWER DISCHARGE.

No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

(A) Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.

(B) Any waters or wastes containing toxic or poisonous solids, liquids or gasses in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance or create any hazard in the receiving waters of the sewage treatment plant.

(C) Any waters or wastes having a pH lower than 5.0 or higher than 9.0, or having other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewage works.

(D) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewage works such as, but not limited to, ashes, cinders, sand, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

('66 Code, § 6-2-1-24) (Ord. 1498, passed - -81) Penalty, see § 10.99

§ 52.044 RESTRICTED DISCHARGE.

No person shall discharge or cause to be discharged the following described substances, materials, waters or wastes except if it appears likely in the opinion of the Superintendent that such wastes will not harm either the sewers, sewage treatment process or equipment, nor have an adverse effect on the receiving stream, nor can otherwise endanger life, limb, public property nor constitute a nuisance. In forming his opinion as to the acceptability of these wastes, the Superintendent will give consideration to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant and other pertinent factors. The following substances, including but not limited to, are not acceptable.

(A) Any liquid or vapor having a temperature greater than 140° F. or 40° C., or of any temperature which might inhibit biological activity at the POTW and result in interference or damage to the POTW.

(B) Any water or waste containing fats, wax, grease or oils, whether emulsified or not, in excess of 100 mg/l of which not more than 25 mg/l is soluble oils, or containing substances which may solidify or become so highly viscous as to retard flow in the sewer system at temperatures between 32° and 150° F., or 0° and 65° C.

(C) Any garbage that has not been properly shredded. The installation and operation of any garbage grinder (other than in a residence) may be subject to the review and approval of the Superintendent.

(D) Any waters or wastes containing strong acid, iron, pickling wastes, or concentrated plating solutions whether neutralized or not.

(E) Any waters or wastes exceeding the following maximum allowable limits: Two mg/l of Zinc, two mg/l of total Chromium, .1 mg/l Cadmium, .5mg/l of Copper, .5 mg/l of Cyanide, two mg/l of Nickel, one mg/l of Chromium as Cr (Hexavalent), .002 mg/l of Mercury as Hg, .05 mg/l of Lead as Pb, 30 mg/l of chlorine demand, 15 mg/l of Iron and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits established by the Superintendent for such materials.

(F) Any waters or wastes containing phenols or other taste or odor-producing substances after treatment of the composite sewage, in such concentrations exceeding limits which may be established by the Superintendent as necessary to meet the requirements of the state, federal or other public agencies of jurisdiction for such discharge to the respective waters.

(G) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Superintendent in compliance with applicable state or federal regulations.

(H) Any waters or wastes having a pH of less than 5.0 or in excess of 9.

(I) Materials which exert or cause:

(1) Unusual concentrations of inert, suspended solids (such as but not limited to, Fullers earth, lime slurries and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate);

(2) Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions);

(3) Unusual BOD, COD or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment plant; and/or

(4) Unusual volume of flow or concentration of wastes constituting "slugs" as defined herein.

(J) Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

('66 Code, § 6-2-1-25) (Ord. 1498, passed - -81; Am. Ord. 2164, passed 11-5-12) Penalty, see § 10.99

§ 52.045 INTERCEPTORS.

(A) *Provisions.* Fats, grease, oil and sand interceptors shall be provided when, in the opinion of the Superintendents, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts or any flammable wastes, sand and other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Superintendent and shall be located as to be readily and easily accessible for cleaning and inspection. ('66 Code, § 6-2-1-33)

(B) *Construction.* Fats, grease, oil and sand interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight and equipped with easily removable covers which when bolted in place shall be gas-tight and watertight. ('66 Code, § 6-2-1-34)

(C) *Maintenance.* Where installed, all fats, grease, oil and sand interceptors shall be maintained by the owner, at his expense, in continuously efficient operation at all times. ('66 Code, § 6-2-1-35) (Ord. 1498, passed - -81)

§ 52.046 PRELIMINARY TREATMENT REQUIRED; MAINTENANCE.

(A) The admission into the public sewers of any waters or wastes having:

(1) A five-day BOD greater than 220 milligrams per liter by weight;

(2) Containing more than 240 milligrams per liter by weight of suspended solids;

(3) Containing any quantity of substances having the characteristics described in § 52.044; or

(4) Having an average daily flow greater than 2% of the average daily sewage flow of the city shall be subject to the review and approval of the Superintendent. Where necessary in the opinion of the Superintendent, the owner shall provide at his expense, such preliminary treatment as may be necessary to:

(a) Reduce the BOD to 220 milligrams per liter and the suspended solids to 240 milligrams per liter by weight;

(b) Reduce objectionable characteristics or constituents to within the maximum limits provided in § 52.044; or

(c) Control the quantities and rates of discharge of such waters or wastes.

(B) Plans, specifications and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for the approval of the Superintendent and of the Stream Pollution Control Board of the state and no construction of facilities shall be commenced until the approval is obtained in writing.

('66 Code, § 6-2-1-36)

(C) Where preliminary treatment facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation, by the owner at his expense. ('66 Code, § 6-2-1-37)

(Ord. 1498, passed - -81)

§ 52.047 CONTROL MANHOLES; SAMPLING AND MEASUREMENT.

(A) When required by the Superintendent, the owner of any property served by a building sewer carrying industrial wastes shall install a suitable control manhole in the building sewer to facilitate observation, sampling and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the Superintendent. ('66 Code, § 6-2-1-38)

(B) All measurement, tests and analysis of the characteristics of waters and wastes to which reference is made in §§ 52.044 and 52.046 (A), shall be determined in accordance with *Standard Methods for the Examination of Water Sewage*, and shall be determined at the control manhole provided for in division (A), or upon suitable samples taken at the control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. ('66 Code, § 6-2-1-39)

(Ord. 1498, passed - -81) Penalty, see § 10.99

§ 52.048 SPECIAL AGREEMENTS.

No statement contained in this chapter shall be construed as preventing any special agreement or arrangement between the city and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the city for treatment, subject to payment therefor by the industrial concern; provided, however, that the payment shall not be less than the pollutant surcharges provided for in §§ 52.085 through 52.092 and all ordinances amendatory thereof and supplemental thereto. ('66 Code, § 6-2-1-40) (Ord. 1498, passed - -81)

§ 52.049 TAMPERING WITH EQUIPMENT AND THE LIKE PROHIBITED.

No unauthorized person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the city's sewage works. ('66 Code, § 6-2-1-41) (Ord. 1498, passed - -81) Penalty, see § 10.99

§ 52.050 PRETREATMENT CONTROL FACILITIES; STANDARDS AND REQUIREMENTS.

(A) *Reference standards.* Pretreatment of industrial wastes from major contributing industries prior to discharge to the treatment works is required and is subject to the rules and regulations adopted by the U.S. EPA and published in the Federal Register on November 8, 1973 (40 C.F.R. Part 128), and *Federal Guidelines Establishing Test Procedures for Analysis of Pollutants*, published in the Federal Register on October 16, 1973 (40 C.F.R. Part 136), in addition to any more stringent requirements established by the city, and any subsequent state or federal guidelines and rules and regulations. ('66 Code, § 6-2-1-42)

(B) *Facility standards.* Plans, specifications and any other pertinent information relating to pretreatment or control facilities shall be submitted for approval of the city and the state and no construction of such facilities shall be commenced until approval, in writing, is granted. Where such facilities are provided, they shall be maintained continuously in satisfactory and effective operating order by the owner at his expense and shall be subject to periodic inspection by the city to determine that such facilities are being operated in conformance with applicable federal, state and local laws and permits. The owner shall maintain operating records and shall submit to the city a monthly summary report of the character of the influent and effluent to show the performance of the treatment facilities and for comparison against city monitoring records. ('66 Code, § 6-2-1-43)

(C) *Certain unpolluted discharges.* Unpolluted water from air conditioners, cooling, condensing systems or swimming pools, shall be discharged to a storm sewer, where it is available, or to a combined sewer approved by the city. Where a storm sewer is not available, discharge may be to a natural outlet approved by the city and the state. Where a storm sewer, combined sewer or natural sewer is not available, such unpolluted water may be discharged to a sanitary sewer pending written approval by the city. ('66 Code, § 6-2-1-44)

(D) *Industrial cooling water.* Industrial cooling water, which may be polluted with insoluble oils or grease or suspended solids, shall be pretreated for removal of pollutants and the resultant clear water shall be discharged in accordance with the above section. ('66 Code, § 6-2-1-45)

(E) *Industrial requirement.* The city may require users of the treatment works, other than residential users, to supply pertinent information on wastewater flows characteristics. Such measurements, test and analysis shall be made at the users' expense. If made by the city, an appropriate charge may be assessed to the user at the option of the city. ('66 Code, § 6-2-1-46)

(F) *Unusual discharges.* Users of the treatment works shall immediately notify the city of any unusual flows or wastes that are discharged accidentally or otherwise to the sewer system. ('66 Code, § 6-2-1-47)
(Ord. 1498, passed - -81)

§ 52.051 DESIGNATED DEPOSITS.

(A) *Designated deposits.* No person shall deposit waste products of septic tanks, cesspools, dry wells, privies or other waste disposal system into the sewage disposal system of the city except at a point or points designated for such deposits by the Board of Public Works and Safety. ('66 Code, § 6-2-1-57)

(B) *Fees assessed.* Any person depositing any waste products referred to in division (A) hereof into the sewage disposal system shall pay a fee to the city of \$.50 per 100 gallons of waste products so deposited payable at the office of the Clerk-Treasurer at times as designated by the Board of Public Works and Safety. ('66 Code, § 6-2-1-58)

(C) *License fee.* Any person depositing waste products referred to in division (A) above into the sewage disposal system shall pay a license fee to the city of \$25 per year, payable at the office of the Clerk-Treasurer on or before May 1 of each calendar year. ('66 Code, § 6-2-1-59)

(D) *Inspections; designated deposits.* Every person so depositing waste products referred to in division (A) hereof into the sewage disposal system shall be subject to inspection by officials designated for such inspections by the Board of Public Works and Safety, and the persons making the inspections shall have the right to require any person depositing the waste in the sewage disposal system to make the proper requirements in the delivery and depositing of the waste products.
(‘66 Code, § 6-2-1-60) (Ord. 1498, passed - -81) Penalty, see § 10.99

RATES AND CHARGES**§ 52.065 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BIOCHEMICAL OXYGEN DEMAND or **BOD**. The same meaning as defined in § 52.001.

BOARD. The Board of Public Works and Safety of the city or any duly authorized officials acting on its behalf.

CITY. The city of Elwood, acting by and through the Board of Public Works and Safety.

COMMERCIAL USER. Any establishment listed in *The Office of Management and Budget's Standard Industrial Classification Manual*, 1972 Edition, (also referred to as SICM) involved in a commercial enterprise, business or service which, based on a determination by the city, discharges primarily segregated domestic wastes or wastes from sanitary conveniences.

DEBT SERVICE COSTS. The average annual principal and interest payments on all outstanding revenue bonds or other long-term capital debt.

EXCESSIVE STRENGTH SURCHARGES. An additional charge which is billed to users for treating sewage wastes with an average strength in excess of "normal domestic sewage."

GOVERNMENTAL USER. Any federal, state or local governmental user of the wastewater treatment works.

INDUSTRIAL USER. Any manufacturing or processing facility that discharges industrial waste to a publicly owned treatment works. Industrial users shall be identified in the SICM under divisions A, B9 D, E or I.

INDUSTRIAL WASTES. The wastewater discharges from industrial, trade or business processes as distinguished from employee wastes or wastes from sanitary conveniences.

INFILTRATION/INFLOW or **I/I**. The total quantity of water from both infiltration and inflow without distinguishing the source.

INSTITUTIONAL USER. Any establishment listed in the SICM involved in a social, charitable, religious or educational function which, based on a determination by the city, discharges primarily segregated domestic wastes or wastes from sanitary conveniences.

MAY. Permissive.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT or ***NPDES***. The same meaning as defined in § 52.001.

NORMAL DOMESTIC SEWAGE.

(1) For the purpose of determining surcharges, wastewater or sewage having an average daily concentration as follows:

- (a) Biochemical oxygen demand not more than 220 milligrams per liter (mg/l).
- (b) Suspended solids not more than 240 milligrams per liter (mg/l).

(2) As defined by origin, wastewaters from segregated domestic or sanitary conveniences as distinguished from wastes from industrial processes.

OPERATION AND MAINTENANCE COSTS. All costs, direct and indirect, necessary to provide adequate wastewater collection, transport and treatment on a continuing basis and produce discharges to receiving waters that conform with all related federal, state and local requirements. These costs include replacement.

OTHER SERVICE CHARGES. Tap charges, connection charges, area charges and other identifiable charges, other than user charges, debt service charges and excessive strength surcharges.

PERSON. Any and all persons, natural or artificial, including any individual, firm, company, municipal or private corporation, association, society, institution, enterprise, governmental agency or other entity.

REPLACEMENT COSTS. The expenditure for obtaining and installing equipment, accessories or appurtenances which are necessary during the service life of the treatment works to maintain the capacity and performance for which such works were designed and constructed.

RESIDENTIAL USER. A user of the treatment works whose premises or building is used primarily as a residence for one or more persons, including all dwelling units.

SEWAGE. The same meaning as defined in § 52.001.

SEWER INDUSTRIAL COST RECOVERY ORDINANCE. A separate and companion enactment to this subchapter, which provides for recovery from industrial users of the sewage works of a portion of the federal grant amount allocable to the construction of sewage facilities for treating industrial waste pursuant to Section 204 (b) of P.L. 92-500 and 40 C.F.R. Part 35.928 (1) and (2).

SEWER USE ORDINANCE. A separate and companion enactment to this subchapter, which regulates the connection to and use of public and private sewers.

SHALL. Mandatory.

SUSPENDED SOLIDS or **SS**. The same meaning as defined in § 52.001.

USER CHARGE. A charge levied on users of the wastewater treatment works for the cost of operation and maintenance of such works pursuant to 33 USC 1251 *et seq.*

USER CLASS. The division of wastewater treatment customers by source, function, waste characteristics and process or discharge similarities (i.e., residential, commercial, industrial, institutional and governmental in the user charge system and is industrial in the industrial cost recovery system). ('66 Code, § 6-2-2-1) (Ord. 1497, passed - -81)

§ 52.066 USER CLASS CHARGES.

Every person whose premises are served by the sewage works shall be charged for the services provided. These charges are established for each user class, as defined, in order that the sewage works shall recover, from each user and user class, revenue which is proportional to its use of the treatment works in terms of volume and load. User charges are levied to defray the cost of operation and maintenance (including replacement) of the treatment works. User charges shall be uniform in magnitude within a user class.

(A) User charges are subject to the rules and regulations adopted by the U.S. EPA, published in the Federal Register August 21, 1973 (38 C.F.R. 22523) and on February 11, 1974 (39 C.F.R. 5252). Replacement costs, which are recovered through the system of user charges, shall be based upon the expected service life of the sewage works plant and equipment.

(B) The various classes of users of the treatment works for the purposes of this section, shall be as follows. Class I contains residential, commercial, governmental and institutional. Class II contains industrial. ('66 Code, § 6-2-2-2) (Ord. 1497, passed - -81)

§ 52.067 MONTHLY RATES.

For the use and service rendered by the sewage works, rates and charges shall be collected from the owners of each and every lot, parcel of real estate or building that is connected with the city sanitary system or otherwise discharges sanitary sewage, industrial wastes, water or other liquids, either directly or indirectly, into the sanitary sewage system of the city. The rates and charges include user charges, debt service costs, excessive strength surcharges and other service charges. Rates and charges shall be as established in the most recent rate ordinance, which is hereby adopted by reference, as amended from time to time by the Common Council. The rate ordinance shall be available for public inspection in the office of the City Clerk.

('66 Code, § 6-2-2-3) (Ord. 1497, passed - -81; Am. Ord. 1657, passed 1-5-87; Am. Ord. 2170, passed 6-3-13)

§ 52.068 QUANTITY USE DETERMINATION.

(A) The quantity of water discharged into the sanitary sewage system and obtained from sources other than the utility that serves the city shall be determined and reasonable elected by the city and the sewage service shall be billed at the above appropriate rates. Further, as is hereinafter provided in this section, the city may make proper allowance in determining the sewage bill for quantities of water shown on the records to be consumed, but which are also shown to the satisfaction of the city that such quantities do not enter the sanitary sewage system.

(B) In the event a lot, parcel of real estate or building discharging sanitary sewage, industrial wastes, water or other liquids into the city sanitary sewerage system, either directly or indirectly, is not a user of water supplied by the water utility serving the city, and the water used thereon or therein is not measured by a water meter, the water used shall be otherwise measured and determined by the city. In order to ascertain the rate or charge provided in this subchapter, the owner or other interested party shall, at his expense, install and maintain meters, weirs, volumetric measuring devices and any adequate and approved method of measurement acceptable to the city for the determination of sewage discharge.

(C) In the event a lot, parcel of real estate or building discharging sanitary sewage, industrial wastes, water or other liquids into the city's sanitary sewerage system, either directly or indirectly, is a user of water supplies by the water utility serving the city and, in addition, is a user of water from another source which is not measured by a water meter or is measured by a meter not acceptable to the city, then the amount of water used shall be otherwise measured or determined by the city. In order to ascertain the rates or charges, the owner or other interested parties, shall, at his expense, install and maintain meters, weirs, volumetric measuring devices or any adequate and approved method of measurement acceptable to the city for the determination of sewage discharge.

(D) In order that the single family domestic and residential users of sewer service shall not be penalized for sprinkling lawns during the summer months of July, August and September the billing for sewage service for residences or domestic users for the months shall be based upon the water usage for the previous months of April, May and June. In the event the water usage for the previous months is greater than the water usage for the summer months, then the billing for sewage services shall be computed on the actual water used in the month for which the sewage service bill is being rendered. Domestic or residential sewage service as applicable to the sprinkling rate shall apply to each lot, parcel of real estate or building which is occupied and used as a single family residence. The sprinkling rate shall not apply to any premises which are partially or wholly used for commercial or industrial purposes. In the event a portion of the premises shall be used for commercial or industrial purposes, the owner shall have the privilege of separating the water service so that the residential portion of the premises is served through a separate meter and in that case the water usage as registered by the water meter serving such portion of the premises used for residential purposes would qualify under the sprinkling rate. This credit will be given to qualified users only upon request.

(E) In the event a lot, parcel of real estate or building discharges sanitary sewage, industrial waste, water or other liquids into the city's sanitary sewerage system, either directly or indirectly, and uses water in excess of 50,000 cubic feet per month, and it can be shown to the satisfaction of the city that a portion of water a measured by the water meter or meters does not and cannot enter the sanitary

sewage system, then the owner or other interested party shall install and maintain meters, weirs, volumetric measuring devices or any adequate and approved method of measurement acceptable to the city for the determination of sewage discharge.

('66 Code, § 6-2-2-4) (Ord. 1497, passed - -81)

§ 52.069 INDUSTRIAL USE DETERMINATION.

(A) In order that the rates and charges may be justly and equitably adjusted to the service rendered to industrial users, the city shall base its charges not only on the volume, but also on strength and character of the stronger-than-normal domestic sewage and wastes which it is required to treat and dispose of. The city shall require the industrial user to determine the strength and content of all sewage and wastes discharged, either directly or indirectly into the sanitary sewage system, in such manner and by such method as the city may deem practicable in the light of the conditions and attending circumstances of the case, in order to determine the proper charge. The industrial user shall furnish a central sampling point available to the city at all times.

(B) Normal sewage domestic waste strength should not exceed a BOD of 220 milligrams per liter of fluid and suspended solids in excess of 240 milligrams per liter of fluid. Additional charges for treating stronger than normal domestic waste shall be made on the following basis:

(1) *Rate surcharge based upon suspended solids.* There shall be an additional charge of \$.15 per pound for suspended solids received in excess of 240 milligrams per liter of fluid.

(2) *Rate surcharge based upon BOD.* There shall be an additional charge of \$.08 per pound for BOD received in excess of 220 milligrams per liter of fluid.

(C) The determination of suspended solids and five-day BOD contained in the waste shall be in accordance with the latest copy of *Standard Methods for the Examination of Water, Sewage and Industrial Wastes*, as written by the American Public Health Association, the American Water Works Association, the Water Pollution Control Federation and in conformance with *Guidelines Establishing Test Procedures for Analysis of Pollutants*, Regulation C.F.R. Part 136, the Federal Register on October 16, 1973.

('66 Code, § 6-2-2-5) (Ord. 1497, passed - -81)

§ 52.070 BILLING AND COLLECTION.

Rates and charges shall be prepared, billed and collected by the city in the manner provided by law and ordinance.

(A) The rates and charges for all users shall be prepared and billed monthly.

(B) The rates and charges may be billed to the tenant or tenants occupying the properties served, unless otherwise requested in writing by the owner, but the billing shall in no way relieve the owner

from the liability in event payment is not made as herein required. The owners of the properties served, which are occupied by a tenant or tenants, shall have the right to examine the collection records of the city for the purpose of determining whether bills have been paid by the tenant or tenants, provided that the examination shall be made at the office at which the records are kept and during the hours that the office is open for business.

(C) As is provided by statute, all rates and charges not paid when due hereby declared to be delinquent and a penalty of 10% of the rates or charges shall thereupon attached. The time at which the rates or charges shall be paid is now fixed at 15 days after the date of mailing of the bill. ('66 Code, § 6-2-2-6) (Ord. 1497, passed - -81)

§ 52.071 USAGE STUDIES CONDUCTED.

(A) In order that the rates and charges for sewage services may remain fair and equitable and be in proportion to the cost of providing services to the various users and user classes, the city shall cause a study to be made within a reasonable period of time following the first 12 months of operation, following the date on which this subchapter goes into effect. The study shall include, but not be limited to, an analysis of the costs associated with the treatment of excessive strength effluents from industrial users or user classes, the financial position of the sewage works and the adequacy of its revenue to provide reasonable funds for operation and maintenance, replacements, debt service requirements and capital improvements to the waste treatment systems.

(B) Thereafter, on an annual basis, within a reasonable period of time following the normal accounting period, the city shall cause a similar study to be made for the purpose of reviewing the fairness and equity of the rates and charges for sewage services on a continuing basis. The studies shall be conducted by officers or employees of the city or by a firm of certified public accountants, or a firm of consulting engineers which firms shall have experience in such studies, or by such combination of officers, employees, certified public accountants or engineers as the city shall determine to be best under the circumstances.

('66 Code, § 6-2-2-7) (Ord. 1497, passed - -81)

§ 52.072 BY-LAWS AND REGULATIONS.

The city shall make and enforce by-laws and regulations as may be deemed necessary for the safe, economical and efficient management of the city's sewerage system, pumping stations and sewage treatment works, for the construction and use of house sewers and connections of the sewerage system, and for the regulation, collection, rebating and refunding of rates and charges.

('66 Code, § 6-2-2-8) (Ord. 1497, passed - -81)

§ 52.073 HARMFUL WASTES PROHIBITED.

The city is hereby authorized to prohibit dumping of wastes into the city's sewage system which, in its discretion, are deemed harmful to the operation of the sewage treatment works of the city or to require methods affecting pretreatment of the wastes to comply with the pretreatment standards included in the NPDES permit issued to the sewage works.

('66 Code, § 6-2-2-9) (Ord. 1497, passed - -81)

§ 52.074 SPECIAL RATE CONTRACTS.

The Board is hereby further authorized to enter into special rate contracts with customers of the sewage works where clearly definable reductions in cost to the sewage works can be determined, and such reduction shall be limited to such reduced costs. The proposed contracts shall be subject to the approval of the Common Council, consistent with federal regulations.

('66 Code, § 6-2-2-10) (Ord. 1497, passed - -81)

INDUSTRIAL COST RECOVERY**§ 52.085 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACT. The *Federal Water Pollution Control Act Amendments of 1972*, 33 USC 1251, *et seq.*, adopted by the 92nd Congress on October 18, 1972.

AMOUNTS FOR RECONSTRUCTION AND EXPANSION. Those amounts which represent a minimum of 80% of the amount retained by the city, together with interest earned thereon. These amounts shall be used solely for the eligible costs of the expansion or reconstruction of treatment works associated with the project and necessary to meet the requirements of the act. The city shall obtain the written approval of the regional administrator of the U.S. EPA prior to commitment of the retained amounts for any expansion and reconstruction. The remaining 20% of the retained amounts may be used at the discretion of the city.

FEDERAL GRANT AMOUNTS. The portion of the total construction costs for Project No. C-180357 03 which was sponsored by the U.S. EPA. The federal grant will amount to approximately \$4,363,575.

INDUSTRIAL COST RECOVERY PERIOD. The period during which the grant allocable to the treatment of wastes from industrial users is recovered from the industrial users of such works, which shall be a period of 30 years.

INDUSTRIAL USER.

(1) Any non-governmental user of the treatment works identified in the *Standard Industrial Classification Manual*, 1972, Office of Management and Budget, as amended and supplemented, under the following divisions:

- (a) Division A: agriculture, forestry and fishing;
- (b) Division B: mining;
- (c) Division D: manufacturing;
- (d) Division E: transportation, communication, electric, gas and sanitary services; and
- (e) Division I: services.

(2) Pursuant to P.L. 95-217, 33 USC 1284, industrial users discharging 25,000 gallons or less per day of equivalent domestic waste are hereby exempt from industrial cost recovery, provided that the waste discharged by the industrial users does not contain any pollutants which:

- (a) Interfere with the treatment works process;
- (b) Are incompatible; or
- (c) Contaminate or reduce the utility of the sludge of the treatment works.

NON-INDUSTRIAL USERS. Any governmental or residential user. The term also includes commercial, institutional and other industrial users where it has been determined that the waste contributed by these users is primarily segregated domestic waste or wastes from sanitary conveniences.

NORMAL DOMESTIC WASTES. Wastes which do not exceed a BOD strength of 220 milligrams per liter of fluid or a suspended solids strength in excess of 240 milligrams per liter of fluid. Also, **NORMAL DOMESTIC WASTES** shall mean wastewaters from segregated domestic or sanitary conveniences as distinct from wastes from industrial processes.

PAYMENT TO U.S. TREASURY. The portion of the recovered amounts that must be returned to the U. S. Treasury on an annual basis. The annual payments to the U.S. Treasury shall amount to 50% of the annual recovered amounts, together with interest earned thereon.

PROJECT NUMBER C-189357 03. A separate and distinct construction project for construction of the Elwood municipal sewage works which was sponsored by the U.S. EPA under the provision of 33 USC 1251, *et seq.* This project does not include past or future construction, equipment or other services not included under the specific project number and the approved plans, specifications and approved change orders for the project which are on file in the Elwood City Hall, and by reference made a part of this section as fully as if same were attached hereto or incorporated herein.

RECOVERED AMOUNTS. The annual payments from industrial users for their share of the federal grant allocable to the cost of treating industrial waste, which is determined by dividing the amount of the total federal grant, allocable to the treatment of industrial waste, by the recovery period.

RETAINED AMOUNTS. The portion of the recovered amounts retained by the city. The retained amounts shall be equal to 50% of the recovered amounts, together with interest earned thereon.

SEGREGATED DOMESTIC WASTES. Wastes from non-residential sources, resulting from normal domestic activities and measurable and set apart from industrial trade or process discharges. ('66 Code, § 6-2-3-1) (Ord. 1499, passed - -81)

§ 52.086 INDUSTRIAL RECOVERY CHARGES; BASIS OF DETERMINATION.

In order to comply with federal regulations, in the case of federal grant assistance for the construction of waste treatment works, where it has been determined that industrial users, as defined in § 52.085, or as amended by appropriate federal regulations, are required to reimburse a portion of the federal grant amount allocable to the capital cost of constructing facilities for the treatment of industrial wastes rates and charges shall be collected from each industrial user connected to the municipal sewage works or otherwise discharges sewage, water or liquids, either directly or indirectly, into the municipal waste treatment system which charges shall be payable as hereinafter provided and shall be in an amount determinable as follows:

(A) The industrial cost recovery charges for the treatment of industrial wastes shall be based upon the volume of sewage flow billed to industrial users, as determined in accordance with appropriate provisions for determining billed flow included in §§ 52.065 through 52.074. The strength and character of industrial wastes shall be measured at the industrial users expense as provided for in §§ 52.065 through 52.074 and furnished to the city. The owner or industrial user shall finish a central sampling point available to the city at all times. In the event that measurement of the strength and character of industrial wastes are not provided to the city on a timely basis, the measurements of the strength and character of industrial wastes shall be determined by the city on the basis of a sample, authorized hereunder, to be taken by the city for the purpose of appropriate billing, no less than annually. The industrial cost recovery rate for the treatment of wastes shall be as follows:

- (1) Monthly volume flow: \$.133 per 1,000 gallons;
- (2) BOD in excess of 220 mg/l: \$.022 per pound;
- (3) SS in excess of 240 mg/l: \$.020 per pound

(B) However, in the event an industrial user can and does show to the satisfaction of the city that a portion of the total monthly billed sewage flow is from sanitary conveniences, then the flow to which the industrial cost recovery charge is applied, shall be determined on the basis of net flow excluding sanitary conveniences.

(C) The industrial cost recovery charges for treatment services on or after the effective date, as stated in § 52.088, shall be prepared and billed monthly.
(‘66 Code, § 6-2-3-2) (Ord. 1499, passed - -81)

§ 52.087 USER CLASSIFICATION.

The city shall determine which users are subject to paying the industrial cost recovery charges, in the following manner:

(A) The city shall require appropriate employees of the sewage works to review billing records and prepare a list of all potential industrial users, as identified in each of the divisions as listed in § 52.085.

(B) The list of all potential industrial users shall be analyzed on the basis of data available at the sewage works billing office (i.e., type of business, volume charges, excessive loading charges, estimated number of employees, etc.) for the purpose of developing preliminary lists of probable industrial and probable non-industrial users.

(C) After completing the survey of all probable industrial users, the city shall review the list of probable non-industrial users to determine if the initial classification of any of these users should be reconsidered. Where appropriate, individual users will be contacted in order to determine the proper classification.

(D) After an industrial user has been notified of his classification, the user may request reconsideration by furnishing data and measurements acceptable to the city for the determination of sewage discharges. The city shall have the right to measure and determine the strength and content of all sewage and waste discharges, either directly or indirectly into the city’s sanitary sewage system, in such manner and by such method as it may deem practicable in the light of the conditions and attending circumstances of each case in order to determine the proper user classification.

(E) Within a reasonable period of time following completion of the sewage works construction project, the city shall have completed the initial classification of all industrial users. During the first calendar year of operation, subsequent to completion of the construction project, and annually thereafter, the city will review, classify and reclassify all users as either industrial or non-industrial users based upon measurements and data obtained by the city or furnished by individual users. Normally, each user will retain his classification until the next succeeding classification period. However, if there is a substantial change in the strength, volume or delivery flow rate characteristics introduced into the treatment works by an individual user, then the classification of that user may be reviewed and established during the year in the light of the conditions and attending circumstances of each case, and may be monitored as often as the Superintendent deems necessary and may include the use of continuously monitoring instruments in appropriate cases, but no less than annually.

(F) Should any user question or disagree with its classification or billing, it may so notify the Superintendent, who shall then review such billing and/or classification and make any adjustments he deems consistent with procedures and records of the sewage treatment facility. If the industrial user and

the Superintendent cannot agree, the matter may then be appealed in writing within ten days to the Board of Public Works and Safety for the city for review and finding, which finding shall be final. ('66 Code, § 6-2-3-3) (Ord. 1499, passed - -81)

§ 52.088 RECOVERY RATES AND CHARGES.

The basis for the industrial cost recovery rates and charges included in § 52.086, are as follows:

(A) Total estimated federal grant amount to be awarded for the plant improvements and interceptor sewers under Project No. C-180357 03 approximately \$4,363,575.

(B) The consulting engineers estimate that an equitable distribution on a percentage basis of the total cost of construction and equipment included in the treatment plant project would be as follows:

- (1) Treatment of sanitary waste flow: 40%;
- (2) Treatment of suspended solids: 30%; and
- (3) Treatment of biochemical oxygen demand: 30%.

(C) The design capacity of the treatment plant is as follows:

- (1) Flow: 1,175 M.G.;
- (2) Suspended solids: 2,351,800 pounds; and
- (3) Biochemical oxygen demand: 2,155,800 pounds.

(D) Industrial cost recovery period will be 30 years.

(E) Average annual basis for the cost recovery charge will amount to \$145,452 (\$4,363,575 federal grant, divided by 30 years recovery period) for treatment.

(F) Total annual basis for the cost recovery charge allocation to treatment functions, is as follows:

- (1) Treatment of waste volume: $(\$145,452 * 40\%) = \$58,181$;
- (2) Treatment of suspended solids: $(\$145,452 * 30\%) = \$43,636$; and
- (3) Treatment of biochemical oxygen demand: $(\$145,452 * 30\%) = \$4,636$.

(G) The industrial cost recovery rates for the treatment charges are computed on the basis of the annual functional costs of treatment, divided by average annual design capacity in the following manner:

- (1) Treatment of waste volume:
 - (a) Annual functional cost of \$58,181; then
 - (b) Divided by annual capacity of 1,175 M.G.; and
 - (c) Equals \$.037 per 100 cubic feet.
- (2) Treatment of suspended solids:
 - (a) Annual functional cost of \$43,636; then
 - (b) Divided by annual capacity of 2,351,800 pounds; and
 - (c) Equals \$.019 per pound.
- (3) Treatment of BOD:
 - (a) Annual functional cost of \$43,636; then
 - (b) Divided by annual capacity of 2,155,800 pounds; and
 - (c) Equals \$.02 per pound.

(H) The rates computed in division (G) above, would result in total recovery of the federal grant amount if all users were subject to the industrial cost recovery requirements, and provided that the treatment plant was used to capacity during the cost recovery period. Therefore, these rates will insure that each industrial user will pay only that portion of the federal grant amount applicable to the costs of the treatment facilities actually utilized to treat industrial wastes, as determined by each industrial user's flow and pollutant loadings and shall only pay industrial cost recovery fees while discharging wastes subject to such fees. ('66 Code, § 6-2-3-4)
(Ord. 1499, passed - -81)

§ 52.089 ACCOUNTING METHOD.

The city shall account for all industrial cost recovery payments in the following manner:

(A) All revenues derived from the industrial cost recovery rates and charges shall be segregated and kept in a special fund separate and apart from all other funds of the city. The special fund shall be designated The Sewage Works Industrial Cost Recovery Fund and payment to the fund shall be deemed a reasonable expense of operation of the sewage works for the purpose of computing net operating revenue.

(B) Within 45 days following the end of the first calendar year after completion of construction of the sewage facilities and annually thereafter, the city shall return 50% of the amount recovered through the industrial cost recovery charges, together with any interest earned thereon, to the U.S. Treasury. Pending use, the city shall invest the retained amounts for reconstruction and expansion in:

(1) Obligations of the U.S. government;

(2) Obligations guaranteed as to principal and interest by the U.S. government or any agency thereof; or

(3) Shall deposit the amounts in accounts fully collateralized by obligations of the U.S. government or by obligations fully guaranteed as to principal and interest by the U.S. government or any agency thereof.

(C) 80% of the funds retained by the city in the Sewage Works Industrial Cost Recovery Fund or authorized investments and the interest earned thereon shall be expended only for the purpose of eligible costs of expansion or reconstruction of the treatment works. The city shall obtain the written approval of the regional; administrator of the U.S. EPA prior to commitment of the retained amounts for any expansion and reconstruction. The remaining 20% of the funds retained by the city may be utilized for any authorized use associated with the sewage works.

('66 Code, § 6-2-3-5) (Ord. 1499, passed - -81)

§ 52.090 INDEPENDENT REVIEW AND VERIFICATION OF RECORDS.

Upon request from the EPA, the city shall encourage each industrial user to permit representatives of the U.S. EPA to review appropriate industrial sewage records for the purposes of independently verifying the flow and characteristics of industrial wastes which are introduced into the treatment works. No waste introduced into the waste treatment system shall interfere with the operation or performance of the sewage treatment works.

('66 Code, § 6-2-3-6) (Ord. 1499, passed - -81)

§ 52.091 USERS SUBJECT TO PRETREATMENT STANDARDS.

All users are subject to the requirements of pretreatment standards established by federal and state law.

('66 Code, § 6-2-3-7) (Ord. 1499, passed - -81)

§ 52.092 RECOVERY COST BILLING.

(A) The industrial cost recovery rates and charges shall be prepared, billed and collected in the manner provided by law and ordinance.

(B) The industrial cost recovery charges for treatment services shall become effective for services rendered during the first billing period following completion of construction and shall be prepared and billed monthly.

(‘66 Code, § 6-2-3-8) (Ord. 1499, passed - -81)

ADMINISTRATION AND ENFORCEMENT

§ 52.105 BILLING PROCEDURES; LATE PAYMENTS.

(A) *Customer charges.* Sewage service bills shall be rendered once each month or at such time as may be determined hereafter by the Board of Public Works and Safety at the same time as water service bills of the municipal Water Utility of the city are, or may from time to time be rendered and shall be payable at the same time as water service bills of the utility are payable. Sewage service bills shall be based upon the rates and charges for the use of and service rendered by the city’s sewage works, as described in §§ 52.065 through 52.074. (‘66 Code, § 6-2-1-63)

(B) *Delinquent payment.*

(1) The rates or charges made pursuant to the terms of this chapter against any lot, parcel of real estate or building that is connected with and uses the city’s sewage works by or through any part of the sewage system of the Sewage Works by or through any part of the sewage system of the city, or that in any way uses or is served by the works, shall be a lien upon and against any lot, parcel of real estate or building. The lien, after written notice to the owner of any lot, parcel of real estate or building, shall attach as the rates or charges become due and payable, and shall be superior to and take precedence over all other liens except the lien for taxes, and shall be enforced as hereinafter set out. Rates and charges so established shall, be paid within 30 days after same are due.

(2) If the rates or charges are not paid within the 30-day period after a written notice to the owner of any lot, parcel of real estate or building, the same shall thereupon become and hereby are declared to be delinquent and a penalty of 10% of the amount of the rates or charges shall thereupon attach thereto, which rates or charges, together with the penalty shall be collectible in the manner hereinafter provided. (‘66 Code, § 6-2-1-64)

(C) *Collection.* It shall be the duty of the officer of the city’s sewage works, charged with the collection of the rates or charges, to enforce payment thereof, together with the penalty provided. The officer shall from time to time each year, certify to the County Auditor a list of rates or charges, including the amount of the penalty, which have become delinquent. The list shall include the name or names of the owner or owners of each and every lot, parcel of real estate or building on which rates or charges have become delinquent, the office of the County Auditor and the amount of the rates or charges, together with the penalty. It shall be the duty of the County Auditor to place and include any rates or charges including the amount of penalty, on the tax list, roll of taxes or tax duplicate, in the appropriate place thereon in respect to the premises on which any rates and charges and penalty are due

and payable, in the manner and pursuant to the terms of I.C. 36-9-23-1 *et seq.*, the General Assembly of the state, and all acts amendatory or supplemental. ('66 Code, § 6-2-1-65)

(D) *Foreclosure of lien.* In addition to the methods of collection of rates or charges, including the penalty thereon, when the same become delinquent as hereinabove provided, the Sewage Works shall have the right to foreclosure the lien hereinbefore established. In all suits brought to foreclosure of the lien, the city's sewage works shall recover the amount of rates or charges and the penalty thereon, together with a reasonable attorney's fee, pursuant to the terms of I.C. 36-9-23-1 *et seq.*, of the General Assembly of the state, and all acts amendatory thereof or supplemental thereto. ('66 Code, § 6-2-1-66) (Ord. 1498, passed - -81)

§ 52.106 POWERS OF SUPERINTENDENT.

If any waters or wastes are discharged or are proposed to be discharged to the public sewers, which waters contain the substance or possess the characteristics enumerated in § 52.044, and which in the judgment of the Superintendent may have a deleterious effect upon the sewage works, processes, equipment or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Superintendent shall:

(A) Require new industries or industries with significant increase in discharges to submit information on wastewater characteristics and obtain prior approval for discharges.

(B) Require other methods of disposal;

(C) Require pretreatment to an acceptable condition of discharge to the public sewers;

(D) Require control over the quantities and rates of discharge;

(E) Require facilities to prevent accidental discharge of any unacceptable wastes; and

(F) Require payment to cover the added cost of handling and treating the wastes not covered by sewer charges under the provisions of § 52.041 and all ordinances amendatory thereof and supplemental thereto, and any fines, penalties or damages assessed against the city for discharge of the wastes. ('66 Code, § 6-2-1-26) (Ord. 1498, passed - -81)

§ 52.107 REVIEW OF PLANS, EQUIPMENT AND THE LIKE.

If the Superintendent permits the pretreatment or equalization of waste flow, the design and installation of the plans and equipment shall be subject to the review and approval of the Superintendent and subject to the requirements of all applicable codes, ordinances and laws.

('66 Code, § 6-2-1-27) (Ord. 1498, passed - -81)

§ 52.108 PERIOD INSPECTION OF DISCHARGE.

Any industrial wastes discharged into the public sewers shall be subject to periodic inspection and determination of volume, character and concentration. The examination shall be made as often as the Superintendent deems it necessary and may include the use of suitable continuously monitoring instruments in appropriate cases. Samples shall be collected either manually or by approved mechanical devices and in such a manner as to be representative of the overall composition of the wastes. Every care shall be exercised in collecting the samples to insure their preservation, until analyzed, in a state comparable to that at the time the samples were collected.

('66 Code, § 6-2-1-28) (Ord. 1498, passed - -81)

§ 52.109 USE OF FACILITIES SUBJECT TO APPROVAL.

The installation, operation and maintenance of the flow measuring and sampling facilities shall be the responsibility of the person discharging the wastes and shall be subject to the approval of the Superintendent. When required by the Superintendent, the owner of any property served by a building sewer carrying industrial wastes shall install a suitable control manhole in the building sewer to facilitate observation sampling and measurement of the wastes. The manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the Superintendent. The manhole shall be installed by the owner at his expense and shall be maintained by him so as to be safe and accessible at all times.

('66 Code, § 6-2-1-29) (Ord. 1498, passed - -81)

§ 52.110 RIGHT TO ENTER PROPERTY; EASEMENT.

(A) The Superintendent, an inspector and other duly authorized employees of the city, state water pollution control employees and U.S. EPA employees bearing proper credentials and identification shall be permitted to enter all properties for the purpose of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this chapter. The Superintendent or his representatives, the state water pollution control employees and U.S. EPA employees shall have no authority to inquire into any processes metallurgical, chemical, oil, refining, ceramic, paper or other industries beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for waste treatment.

('66 Code, § 6-2-1-30)

(B) The Superintendent and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter all private properties through which the city holds a duly negotiated easement for the purposes of, but not limited to inspection, observation, measurements, sampling, repair and maintenance of any portion of the sewage works lying within the easement. All entry and subsequent work, if any, on the easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved. ('66 Code, § 6-2-1-32)

(Ord. 1498, passed - -81)

§ 52.111 LIABILITY.

While performing the necessary work on private properties referred to in § 52.110 (A), the Superintendent or duly authorized employees of the city shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the city employees and the city shall indemnify the company against loss or damage to its property by city employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation except as may be caused by negligence or failure of the company to maintain safe conditions as required in § 52.109. ('66 Code, § 6-2-1-31) (Ord. 1498, passed - -81)

CHAPTER 53: INDUSTRIAL WASTE

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Cross-reference:

Industrial Cost Recovery, see §§ 52.085 through 52.095

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GENERAL PROVISIONS

§ 53.01 DEFINITIONS.

(A) *Definitions.* For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACT or ***THE ACT.*** The *Federal Water Pollution Control Act*, (P.L. 92-500) also known as the *Clean Water Act of 1977*, as amended, 33 USC 1251, *et. seq.* (95-217); as well as any guidelines, limitations and standards promulgated by the Environmental Protection Agency pursuant to ***THE ACT.***

APPLICABLE PRETREATMENT STANDARD. Any pretreatment limit or prohibitive standard (federal and/or local) contained in this chapter deemed to be the most restrictive which non-domestic users will be required to comply with.

APPROVAL AUTHORITY. The Director in an NPDES state with an approved state pretreatment program or the Administrator of the EPA in a non-NPDES state or NPDES state without an approved state pretreatment program.

AVERAGE MONTHLY DISCHARGE LIMITATION. The highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

AUTHORIZED REPRESENTATIVE OF INDUSTRIAL USER.

(1) A principal executive officer of at least the level of vice-president, if the industrial user is a corporation;

(2) A general partner or proprietor if the industrial user is a partnership or proprietorship, respectively;

(3) A duly authorized representative of the individual designated above if the representative is responsible for the overall operation of the facilities from which the indirect discharge originates.

BENEFICIAL USES. These uses include, but are not limited to, domestic, municipal, agricultural and industrial use, power generation, recreation, aesthetic enjoyment, navigation and the preservation and enhancement of fish, wildlife and other aquatic resources or reserves, and other uses, both tangible or intangible, as specified by state or federal law.

BIOCHEMICAL OXYGEN DEMAND or BOD. The quantity of dissolved oxygen in milligrams per liter required during stabilization of the decomposable organic matter by aerobic biochemical action under standard laboratory procedures for five days at 200° C. The laboratory determinations shall be made in accordance with procedures set forth in *Standard Methods*.

BUILDING DRAIN or HOUSE DRAIN. The lowest horizontal piping of a building drainage system which receives the discharge from waste and other drainage pipes inside the walls of the building and conveys it to a point approximately five feet outside the foundation wall of the building.

BUILDING DRAIN - SANITARY. A building drain which conveys sanitary or industrial sewage only.

BUILDING DRAIN - STORM. A building drain which conveys storm water or other clear water drainage, but no wastewater.

BUILDING LATERAL SEWER or HOUSE LATERAL SEWER. The extension from the building drain to the sewerage system or other place of disposal.

BUILDING SEWER - SANITARY. A building sewer which conveys sanitary or industrial sewage only.

BUILDING SEWER - STORM. A building sewer which conveys stormwater or other clear water drainage, but no sanitary or industrial sewage.

CATEGORICAL STANDARDS. National categorical pretreatment standards or pretreatment standard.

CHEMICAL OXYGEN DEMAND or **COD.** A measure of the oxygen equivalent of that portion of the organic matter in a sample that is susceptible to oxidation by a strong chemical oxidant. The laboratory determination shall be made in accordance with procedures set forth in *Standard Methods*.

COMMON COUNCIL. The Elwood Common Council. It is the governing body of the sewerage system of the city, which is a public utility.

COMPATIBLE POLLUTANTS.

(1) Biochemical oxygen demand, suspended solids, pH and fecal coliform bacteria, plus additional pollutants if the treatment works was designed to treat the pollutants, and in fact does remove the pollutants to a “substantial degree.”

(2) The term “substantial degree” is not subject to precise definition, but generally contemplates removals in the order of 80% or greater. Minor incidental removals in the order of 10% to 30% are not considered substantial. Examples of the additional pollutants which may be compatible include:

- (a) Chemical oxygen demand;
- (b) Total organic carbon;
- (c) Phosphorous and phosphorous compounds;
- (d) Nitrogen and nitrogen compounds; and

(e) Fats, oils and greases of animal or vegetable origin (except as prohibited where these materials would interfere with the operation of the treatment works).

COMPOSITE SAMPLE. A **COMPOSITE SAMPLE** should contain a minimum of eight discrete samples taken at equal time intervals over the compositing period or proportional to the flow rate over the compositing period. More than the minimum number of discrete samples will be required where the wastewater loading is highly variable.

DAILY DISCHARGE. Discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar for purposes of sampling.

DEPARTMENT. The City of Elwood Wastewater Treatment Plant, including the sewer collection.

DOMESTIC SEWAGE. Wastewater from typical residential users and having pollutant characteristics of not greater than 250 mg/l of BOD and 250 mg/l of suspended solids.

EASEMENT. An acquired legal right of the specific use of land owned by others.

EFFLUENT. Water, together with any wastes that may be present, flowing out of a drain, sewer, receptacle or outlet.

ENVIRONMENTAL PROTECTION AGENCY or EPA. The U.S. Environmental Protection Agency, or where appropriate, the term may also be used as a designation for the administrator or other duly authorized official of the agency.

FECAL COLIFORM. Any of a number of organisms common to the intestinal tract of man and animals, whose presence in sanitary sewage is an indicator of pollution.

FLOATABLE OIL. Oil, fat or grease in a physical state, so that will separate by gravity from wastewater by treatment in an approved pretreatment facility.

GARBAGE. Any solid wastes from the preparation, cooking or dispensing of food and from handling, storage or sale of produce.

GREASE AND OIL. A group of substances including hydrocarbons, fatty acids, soaps, fats, waxes, oils or any other material that is extracted by a solvent from an acidified sample and that is not volatilized during the laboratory test procedures. Greases and oils are defined by the method of their determination in accordance with *Standard Methods*.

GREASE AND OIL OF ANIMAL AND VEGETABLE ORIGIN. Substances of biodegradable nature such as are discharged by meatpacking, vegetable oil and fat industries, food processors, canneries, restaurants, etc.

GREASE AND OIL OF MINERAL ORIGIN. Substances that are less readily biodegradable than grease and oil of animal or vegetable origin; and are derived from a petroleum source. The substances include machinery lubricating oils, gasoline station wastes, petroleum refinery wastes, storage depot wastes and the like.

GROUND GARBAGE or SHREDDED GARBAGE. Garbage that is shredded to such a degree that all particles will be carried freely in suspension under the conditions normally prevailing in the sewerage system, with no particle being greater than 1/2-inch in dimension.

GRAB SAMPLE. A sample which is taken from a waste stream on a one-time basis with no regard to the flow in the waste stream and without consideration of time.

HOLDING TANK WASTE. Any waste from holding tanks, such as chemical toilets, campers, trailers, septic tanks, vacuum pump trucks, etc.

INCOMPATIBLE POLLUTANT. Any pollutant that is not defined as a compatible pollutant, including non-biodegradable dissolved solids and further defined in 40 C.F.R. Part 403.

INDUSTRIAL USER. Any industrial or commercial establishment manufacturing or processing facility that discharges industrial waste to a publicly-owned treatment works.

INDUSTRIAL WASTES. Any solid, liquid or gaseous substance or form of energy discharged or permitted to flow or escape from an industrial, manufacturing, commercial or business process or from the development, recovery or processing of any natural resource carried on by a person and shall further mean any waste from an industrial user.

INDUSTRIAL WASTE PERMIT. A permit to deposit or discharge industrial waste into any sanitary sewer as issued by the POTW.

INFILTRATION. The water entering a sewer system, including sewer service connections, from the ground, through such means as, but not limited to defective pipes, pipe joints, connections or manhole walls.

INFILTRATION/INFLOW. The total quantity of water from other infiltration and inflow without distinguishing the source.

INFLOW. The water discharged into a sewer system, including service connections from such sources as, but not limited to, roof leaders, cellar, yard and area drains, foundation drains, cistern overflows, cooling water discharges, drains from springs and swampy areas, manhole covers, cross connections from storm sewers and combined sewers, catch basins, storm waters, surface run-off, street wash waters or drainage. **INFLOW** does not include, and is distinguished from, infiltration.

INFLUENT. The water, together with any wastes that may be present, flowing into a drain, sewer, receptacle or outlet.

INSPECTOR. A person and duly authorized employee of the utility bearing proper credentials and identification, who shall be permitted to enter all properties for the purpose of inspection, observation, measurement, sampling and testing in accordance with the provisions of this chapter.

INTERFERENCE. The inhibition or disruption of the POTW treatment processes or operations which contributes to a violation of any requirement of the city's NPDES permit and as defined in 40 C.F.R. 403, January 28, 1981, Federal Register 403.3(i). The term includes prevention of sewage sludge use or disposal by the POTW in accordance with 405 of the Act, (33 USC 1345) or any criteria, guidelines or regulations developed pursuant to the *Solid Waste Disposal Act (SWDA)*, the *Clean Air Act*, the *Toxic Substances Control Act* or more stringent state criteria (including those contained in any state sludge management plan prepared pursuant to Title IV of *SWDA*) applicable to the method of disposal or use employed by the POTW.

MAJOR CONTRIBUTOR. A contributor that:

- (1) Has a flow of more than 25,000 gallons per average workday;
- (2) Has in its waste a toxic pollutant in toxic amounts as defined in § 307 of the Federal Act;

(3) Has a flow greater than 5% of the flow carried by the municipal system receiving the waste;
or

(4) Has in its wastes toxic pollutants as defined pursuant to § 307 of the Act, of state statutes and rules; or

(5) Is found by the city, state Control Agency or the U.S. Environmental Protection Agency (EPA) to have significant impact, either singly or in combination with other contributing industries, on the wastewater treatment system, the quality of sludge, the system's effluent quality or air emissions generated by the system.

MAXIMUM DAILY DISCHARGE LIMITATIONS. Highest allowable daily discharge.

NATIONAL CATEGORICAL PRETREATMENT STANDARD or **PRETREATMENT STANDARD.** Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with § 307(b) and (c) of the Act which applies to a specific category of industrial users.

NATIONAL PROHIBITIVE DISCHARGE STANDARD or **PROHIBITIVE DISCHARGE STANDARD.** Any regulation developed under the authority of § 307(b) of the Act and 40 C.F.R. § 403.5 and includes specific prohibitions or limits as developed by a POTW, either as a requirement of an approved POTW pretreatment program or an NPDES permit.

NATURAL OUTLET. Any outlet into a watercourse, pond, lake or other body of surface or ground water.

NEW SOURCE. Any building, structure facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of the propose pretreatment standards under Section (c) of the Act which will be applicable to the source if the standards are hereafter promulgated in accordance with that section.

NPDES PERMIT. National Pollutant Discharge Elimination System permit setting forth conditions for the discharge of any pollutant or combination of pollutants to the navigable waters of the United States pursuant to § 402 of P.L. 95-217.

NUISANCE. Anything which is injurious to health or offensive to the senses or an obstruction to the free use of property so as to interfere with the comfort or enjoyment of life or property.

PASS THROUGH. The discharge of pollutants by an industrial user through the POTW into navigable waters in quantities or concentrations which are a cause of or significantly contribute to a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) and as defined in 40 C.F.R. 403 Part 403.3(n).

PERSON.

(1) Any and all **PERSONS**, natural or artificial, including any individual, firm, company, municipal or private corporation, partnership, copartnership, joint stock company, trust, estate, association, society, institution, enterprise, governmental agency, the state, the United States or other legal entity or their legal representatives, agents or assigns.

(2) The masculine gender shall include the feminine, the singular shall include the plural where indicated by the context.

pH. The logarithm (to the base ten) of the reciprocal of the hydrogen ion concentration of a solution expressed in gram atoms per liter of solution.

POLLUTANT. Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.

POLLUTION. An alteration of the quality of the waters of the state by waste to a degree which unreasonably affects waters for beneficial uses or facilities which serve beneficial uses. The man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of water.

PREMISES. A parcel of real estate including any single improvement thereon which is determined by the city to be a single user for purposes of receiving, using and payment for service. Any additional improvement on the same parcel of real estate which is determined by the city to be a user shall be separately connected to the sewerage for the purpose of receiving, using and payment for service.

PRETREATMENT. The reduction of the amount of pollutants, the elimination of pollutants or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing pollutants into a POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by 40 C.F.R. § 403.6 (d); and shall include all applicable rules and regulations contained in the code of Federal Regulations as published in the Federal Register, under § 307 P.L. 95-217, under regulation 40 C.F.R. Part 403 pursuant to the Act, and amendments.

PRETREATMENT REQUIREMENTS. Any substantive or procedural requirement related to pretreatment, other than a national pretreatment standard imposed on an industrial user.

PROPER OPERATION AND MAINTENANCE. Procedures executed in a prudent, cost-effective and workmanlike manner which achieve the highest and/or required effluent quality of industrial discharge attainable in conformance with the best available technology and practices. **PROPER OPERATION AND MAINTENANCE** requirements include avoidance of operational error, adherence to manual instructions, preventive maintenance, avoidance of careless or improper operation, neat accurate sampling, analysis and records retention, storage of process chemicals, lubricants, solvents etc.,

in a safe and organized manner, avoidance of accidental spillage, keeping operating logs, and any other activities which produce the desired effluent quality.

PUBLICLY-OWNED TREATMENT WORKS or ***POTW***. A treatment works as defined by § 212 of the Act, (33 USC 1292) which is owned in this instance by the city. This definition includes any sewers that convey wastewater to the POTW treatment plant, but does not include pipes, sewers or other conveyances not connected to a facility providing treatment. For the purposes of this chapter, ***POTW*** shall also include any sewers that convey wastewaters to the ***POTW*** from persons outside the city who are, by contract or agreement with the city, users of the city's ***POTW***. Also, known as sewage works.

POTW TREATMENT PLANT. That portion of the POTW designed to provide treatment to wastewater.

RECEIVING STREAM. The water course, stream or body of water receiving the wastes or treated effluent from wastewater treatment facilities.

SANITARY SEWAGE. The waste from water closets, urinals, lavatories, sinks, bathtubs, showers, basement drains, household laundries, garage floor drains, bars, soda fountains, cuspidors, refrigerator drips, drinking fountains, stable floor drains and all other water-carried waste except industrial wastes.

SEWAGE WORKS. Sewers, wastewater treatment plant, sewerage system and any associated structures or equipment. Also, known as POTW.

SEWER. A pipe or conduit laid for carrying wastewater or other liquids.

(1) ***COMBINED SEWER***. A sewer which carries both storm, surface, ground water runoff and wastewater.

(2) ***PUBLIC SEWER***. A sewer in which all owners of abutting property have equal rights and which is controlled by public authority, including the following elements:

(a) ***COLLECTION SEWER***. A sewer whose primary purpose is to collect wastewaters from individual point source discharges.

(b) ***INTERCEPTOR SEWER***. A sewer whose primary purpose is to transport wastewater from collector sewers to a treatment facility.

(c) ***FORCE MAIN***. A pipe in which wastewater is carried under pressure.

(d) ***PUMPING STATION***. A station positioned in the public sewerage system at which wastewater is pumped to higher level.

(3) ***SANITARY SEWER***. A sewer which carries wastewater and to which storm, surface and ground waters and unpolluted industrial wastewater are not intentionally admitted.

(4) **STORM SEWER.** A sewer which carries storm, surface and ground water drainage but excludes wastewater.

SEWERAGE SYSTEM. The network of publicly-owned sewers and appurtenances used for collecting, transporting and pumping wastewater to the wastewater treatment plant.

SLUDGE. Any solid, semi-solid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility or any other waste having similar characteristics and effects as defined in standards issued under §§ 402 and 405 of the Federal Act and in the applicable requirements under §§ 3001, 3004 and 4004 of the *Solid Waste Disposal Act*, P.L. 94-580.

SLUG. Any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than five minutes more than five times the average 24-hour concentration of flow during normal operation and shall adversely affect the sewage works.

STANDARD INDUSTRIAL CLASSIFICATION or SIC. A classification pursuant to the *Standard Industrial Classification Manual* issued by the Executive Office of the President, Office of Management and Budget, 1972.

STANDARD METHODS. The laboratory procedures set forth in the latest edition, at the time of analysis, of *Standard Methods for the Examination of Water and Wastewater*, prepared and published jointly by the American Public Health Association, the American Water Works Association and the Water Pollution Control Federation.

STORM WATER. Any flow occurring during or following any form of natural precipitation and resulting therefrom.

SUPERINTENDENT. The administrative head of the Wastewater Treatment Plant and Collection System.

SUPERVISOR, SEWER MAINTENANCE. Administrative head of sewer maintenance.

SURCHARGE. A charge for services in addition to the basic service charge.

SUSPENDED SOLIDS. Solids which either float on the surface of or are in suspension in water, sewage or other liquid and which are removable by laboratory filtration. Their concentration shall be expressed in milligrams per liter. Quantitative determination shall be made in accordance with procedures set forth in *Standard Methods*.

TOTAL SOLIDS. The sum of suspended and dissolved solids.

TOXIC AMOUNT. Concentrations of any pollutant or combination of pollutants which upon exposure to or assimilation into any organism will cause adverse effects such as cancer, genetic

mutations and physiological manifestations, as defined in standards issued pursuant to the *Clean Water Act*, P.L. 94-217.

TOXICANT. A substance that is known or suspected carcinogens, mutagens or teratogens and substances present in industrial discharges with known toxic effects on human and aquatic life which is among the 129 elements and compounds or “priority pollutants” developed under the *Clean Water Act* in § 307(a). Also called “toxic pollutant.”

UNPOLLUTED WATER. Water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to sanitary sewers and wastewater treatment facilities provided.

UPSET. An exceptional incident in which a discharger unintentionally and temporarily is in a state of noncompliance with the standards set forth in this chapter due to factors beyond the reasonable control of the discharger and excluding noncompliance to the extent caused by operational error, improperly designed pretreatment facilities, lack of preventive maintenance or careless or improper operation thereof.

USER. Any person that discharges, causes, or permits the discharge of wastewater into the sewerage system.

USER CLASSES.

(1) The industrial class shall include any user, identified in the *Standard Industrial Classification Manual of 1972*, Office of Management and Budget, as amended and supplemented, under the following divisions:

- (a) Division A - Agriculture, Forestry and Fishing;
- (b) Division B - Mining;
- (c) Division D - Manufacturing;
- (d) Division E - Transportation, Communications, Electric, Gas and Sanitary services; and
- (e) Division I - Services.

(2) The non-industrial class shall include all users whose wastes are segregated domestic wastes or wastes from sanitary conveniences where regular domestic wastes or wastes from sanitary conveniences where regular domestic wastes are those wastes generated by normal domestic activity.

VOLATILE ORGANIC MATTER. The material in the sewage solids transformed to gases or vapors when heated at 550° C. for 15 to 20 minutes.

WASTE. Includes sanitary sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation or of human or animal origin or from any producing,

processing, manufacturing or industrial operation of whatever nature, including such waste placed within containers or whatever nature prior to, and for purposes of disposal.

WASTEWATER. The water-carried waste from residences, businesses, buildings, institutions and industrial establishments, singular or in any combination, together with such ground, surface and storm waters as may be present.

WASTEWATER CONSTITUENTS AND CHARACTERISTICS. The individual chemical, physical, bacteriological and radiological parameters, including volume, flow rate and such other parameters that serve to define, classify or measure the contents, quality, quantity and strength of wastewater.

WASTEWATER TREATMENT PLANT. Any arrangement of devices and structures used for treating wastewater.

WATERS OF THE STATE. Any water, surface or underground, within the boundaries of Indiana, except confined waters in sewers, tanks, etc.

WATERCOURSE. A channel in which a flow of water occurs, either continuously or intermittently.

(B) *Usage.* The use of the word shall indicate a mandatory condition. The use of the word may indicate a discretionary condition.

(C) *Abbreviations.* The following abbreviations shall have the designated meanings:

40 C.F.R. 403. General pretreatment regulations as published in the Federal Register on June 26, 1978, and on January 28, 1981, and in subsequent amendments thereto.

ASTM. American Society For Testing Materials.

BOD. Biochemical oxygen demand.

CFR. Code of Federal Regulations.

COD. Chemical oxygen demand.

EPA. Environmental Protection Agency.

ISBH. Indiana State Board of Health.

l. Liter.

mg. Milligrams.

mg/l. Milligrams per liter.

NPDES. National Pollutant Discharge Elimination System.

O&M. Operation and maintenance.

POTW. Publicly-owned treatment works.

SIC. Standard industrial classification.

SWDA. *Solid Waste Disposal Act, 42 U.S.C. 6901*, et seq.

TSS. Total suspended solids.

USC. United States Code.

WPCF. Water Pollution Control Federation.

(Ord. 1498a, passed 6-18-84; Am. Ord. 1613, passed 2-15-85)

§ 53.02 PURPOSE; OBJECTIVES.

(A) This chapter sets forth uniform requirements for users of the publicly-owned treatment works (POTW) and enables the city to comply with all applicable state and federal laws required by the *Clean Water Act of 1977* and 40 C.F.R. Part 403.

(B) The objectives of this chapter are:

(1) To prevent the introduction of pollutants into the municipality's wastewater system which will interfere with the normal operation of the system or contaminate the resulting sludge;

(2) To prevent the introduction of pollutants into the POTW which do not receive adequate treatment in the POTW and which will pass through the system into receiving waters or the atmosphere or otherwise be incompatible with the system; and

(3) To improve the opportunity to recycle and reclaim wastewaters and sludge from the system.

(C) This chapter provides for the regulation of direct and indirect dischargers to the municipal wastewater system through the issuance of permits to certain non-domestic users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting, assumes that existing customer's capacity will not be pre-empted and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein. This chapter does not provide for the recovery of operations, maintenance or replacement costs of the POTW or the costs associated with the construction of collection and treatment

systems used by industrial dischargers, in proportion to their use of the POTW, which are the subject of a separate chapter.

(Ord. 1498a, passed 6-18-84)

§ 53.03 APPLICATION OF CHAPTER; ADMINISTRATIVE AUTHORITY.

This chapter shall apply to the city and to persons outside the city who are, by contract or agreement with the city, users of the city's POTW. This chapter is a supplement to §§ 52.001 through 52.051 and 52.105 through 52.111. Except as otherwise provided herein, the Superintendent of the Elwood Wastewater Treatment facilities shall administer, implement and enforce the provisions of this chapter.

(Ord. 1498a, passed 6-18-84)

§ 53.04 ANNUAL REVIEW OF CHAPTER.

This chapter shall be reviewed annually by the Superintendent or his designated representative to insure compliance with current state and federal regulations and as necessary recommend to the city actions to upgrade this chapter.

(Ord. 1498a, passed 6-18-84)

REGULATIONS

§ 53.15 DISCHARGES PROHIBITED.

(A) No user shall contribute or cause to be contributed, directly or indirectly, any pollutant or wastewater which will interfere with the operation or performance of the POTW. These general prohibitions apply to all such users of a POTW whether or not the user is subject to national categorical pretreatment standards or any other national, state or local pretreatment standards or requirements.

(B) A user may not contribute the following substances to any POTW:

(1) Any liquids, solids or gases which by reason of their nature or quantity are or may be sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the POTW or to the operation of the POTW. At no time, shall two successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system) be more than 10% of the lower explosive limit (LEL) of the meter. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides and sulfides and any other substances which the city, the state or EPA has notified the user is a fire hazard or a hazard to the system;

(2) Solid or viscous substances which may cause obstruction to the flow in a sewer or other interference with the operation of the wastewater treatment facilities such as, but not limited to: grease, garbage with particles greater than ½-inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastics, gas, tar, asphalt residues, residues from refining, or processing of fuel or lubricating oil, mud, or glass grinding or polishing wastes, butchers offal or any other solid or viscous substance capable of causing interference with the proper operation of the sewage system or the wastewater treatment plant;

(3) Any wastewater having a pH less than 5.0 or greater than 11.0 or wastewater having any other corrosive property capable of causing damage or hazard to structures, equipment and/or personnel of the POTW;

(4) Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to:

(a) Injure or interfere with any wastewater treatment process;

(b) Constitute a hazard to humans or animals; or

(c) Create a toxic effect in the receiving waters of the POTW, or to exceed the limitation set forth in a categorical pretreatment standard. A toxic pollutant shall include but not be limited to any pollutant identified pursuant to § 307(a) of the Act.

(5) Any noxious or malodorous liquids, gases or solids which either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair;

(6) Any substance which will cause the POTW to violate its limits and restrictions set forth in the city's NPDES permit;

(7) Any substance with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions;

(8) Any wastewater having a temperature which will inhibit biological activity in the POTW treatment plant resulting in interference; but in, no case, wastewater with a temperature at the introduction into the POTW which exceeds 40° C. or 104° F. or any liquid or vapor discharged into the sewer system having a temperature higher than 150° F. or 65° C.;

(9) Any unpolluted water including, but not limited to non-contact cooling water;

(10) Any waters or wastes containing acid metallic pickling wastes or concentrated plating solutions;

(11) Any toxic radioactive isotopes of such half life or concentration as exceeds limits established by state and federal regulations. The radioactive isotopes I 131 and P 32 used in hospitals are not prohibited, if they are properly diluted before being discharged into the sewerage system;

(12) Any waters or wastes containing any toxic substances in quantities that are sufficient to:

(a) Interfere with the biochemical processes of the wastewater treatment plant;

(b) That will pass through the plant into the receiving stream in amounts exceeding the standards set by federal, interstate, state or other competent authority having jurisdiction;

(c) Contaminate sewage sludge; or

(d) That contain iron or any other toxic ions, compounds or substances in concentrations or amounts exceeding the limits established from time to time by the city that exert an excessive chlorine requirement on the POTW.

(13) (a) Any unusual volume of flow or concentration of wastes constituting "slugs" that for a duration of five minutes or more have a concentration or flow of more than five times the average concentration of the BOD, the suspended solids or flow of the customer's sewage discharged during a 24-hour period of normal operation and are released in a single extraordinary discharge event which causes interference to the POTW;

(b) Any pollutant, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW;

(14) Any waters or wastes containing suspended solids or dissolved solids of such character and quantity that unusual provision, attention, and expense would be required to handle such materials at the wastewater treatment plant, its pumping stations, or other facilities;

(15) Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the POTW cause the POTW to be in non-compliance with sludge use or disposal criteria, guidelines or regulations developed under § 405 of the Act; any criteria, guidelines or regulations affecting sludge use or disposal developed pursuant to the *Solid Waste Disposal Act*, *Resource Conservation and Recovery Act*, the *Clean Air Act*, the *Toxic Substances Control Act* or state criteria applicable to the sludge management method being used; and/or

(16) Any wastewater which causes a hazard to human life or creates a public nuisance. When the Superintendent determines that a user(s) is contributing to the POTW, any of the above enumerated substances in such amounts as to interfere with the operation of the POTW or Superintendent shall:

(a) Advise the user(s) of the impact of the contribution on the POTW; and

(b) Require pretreatment and/or procedures to correct the interference with the POTW and eliminate the prohibited discharge.
 (Ord. 1498a, passed 6-18-84; Am. Ord. 1613, passed 2-15-85; Am. Ord. 1498(a), passed 3-5-07)
 Penalty, see § 53.99

§ 53.16 SPECIFIC POLLUTANT LIMITATIONS.

No person shall discharge wastewater containing in excess of the following concentrations at the point(s) where such wastewater enters the sewerage system based upon a 24-hour by-flow composite sample. Multiple industrial wastewater discharges from a permitted facility may be combined in a flow weighted manner to determine compliance with the following limitations for a 24-hour composite sample and daily maximum discharge.

Maximum Concentration (mg/l)	After June 30, 1985 Daily Maximum
Arsenic, total	0.03
Cadmium, total	1.0104
Chromium, total	12.2032
Copper, total	1.3156
Cyanide, total by distillation	0.6092
Lead, total	1.8511
Mercury, total	0.0346
Nickel, total	4.480
Silver, total	0.24
Zinc, total	11.3632
Phenols, total	0.5
Oil & Grease (animal or vegetable origin)	200

Maximum Concentration (mg/l)	After June 30, 1985 Daily Maximum
Oil & Grease (mineral or petroleum origin)	100
PCB's	No discharge allowed

(Ord. 1498a, passed 6-18-84; Am. Ord. 1651, passed 10-15-86) Penalty, see § 53.99

§ 53.17 FEDERAL CATEGORICAL PRETREATMENT STANDARDS; MODIFICATIONS.

(A) *Greater restrictions prevail.* Upon the promulgation of the federal categorical pretreatment standards for a particular industrial subcategory, the federal standard, if more stringent than limitations imposed under this chapter for sources in that subcategory, shall immediately supersede the limitations imposed under this chapter. The Superintendent shall notify all affected users of the applicable reporting requirements under 40 C.F.R. § 403.12. Federal standards are required to be met at the end of the regulated process or at the point of discharge from an industrial pretreatment system prior to mixing with any other waste stream and before discharge to the POTW.

(B) *Modification of federal categorical pretreatment standards.*

(1) Where the POTW achieves consistent removal of pollutants limited by federal pretreatment standards, the POTW may apply to the approval authority for modification of specific limits in the federal pretreatment standards.

(2) **CONSISTENT REMOVAL.** The average of the lowest 50% of the removals measured according to § 403.7 (d)(2), 40 C.F.R. § 403 and shall mean a reduction in amount of a pollutant in the POTW's effluent or alternation of the nature of a pollutant during treatment at the POTW when measured according to the procedures set forth in § 403.7 of 40 C.F.R. Part 403, *General Pretreatment Regulations for Existing and New Sources of Pollution* promulgated pursuant to the Act. The POTW may then modify pollutant discharge limits in the Federal Pretreatment Standards if the requirements contained in 40 C.F.R. Part 403, § 403.7, are fulfilled and prior approval from the approval authority is obtained.

(Ord. 1498a, passed 6-18-84)

§ 53.18 POTW RIGHT OF REVISION.

The POTW reserves the right to establish by ordinance more stringent limitations or requirements on discharges to the wastewater disposal system if deemed necessary to comply with the objectives presented in § 53.02 of this chapter.

(Ord. 1498a, passed 6-18-84)

§ 53.19 DILUTION OF DISCHARGE PROHIBITED.

No user shall ever increase the use of process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the federal categorical pretreatment standards, or in any other pollutant-specific limitation developed by the city or state.

(Ord. 1498a, passed 6-18-84) Penalty, see § 53.99

§ 53.20 ACCIDENTAL DISCHARGE; PROCEDURES AND NOTICE.

(A) Each user shall provide protection from accidental discharge of prohibited materials or other substances regulated by this chapter. Where necessary facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the owner or user's own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the POTW for review and shall be approved by the POTW before construction of the facility. No user who commences contribution to the POTW after the effective date of this chapter shall be permitted to introduce pollutants into the system until accidental discharge procedures have been approved by the POTW. Review and approval of such plans and operating procedures shall not relieve the industrial user from the responsibility to modify the user's facility as necessary to meet the requirements of this chapter. In the case of an accidental discharge, it is the responsibility of the user to immediately telephone and notify the POTW of the incident. The notification shall include location of discharge, type of waste, concentration and volume and corrective actions.

(B) Within seven days following an accidental discharge; the user shall submit to the Superintendent a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage or other liability which may be incurred as a result of damage to the POTW, fish kills or any other damage to person or property; nor shall such notification relieve the user of any fines, civil penalties or other liability which may be imposed by this section or other applicable law.

(C) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a dangerous discharge. Employers shall insure that all employees who may cause or suffer such a dangerous discharge to occur are advised of the emergency notification procedure.

(Ord. 1498a, passed 6-18-84) Penalty, see § 53.99

§ 53.21 MORE RESTRICTIVE REQUIREMENTS.

State requirements and limitations on discharges shall apply in any case where they are more stringent than federal requirements and limitations or those in this chapter or in §§ 52.001 through 52.051 and 52.105 through 52.111.

(Ord. 1498a, passed 6-18-84)

§ 52.22 RESPONSIBILITY FOR SEWER DAMAGE FROM IMPROPER DISCHARGE.

If a public sewer becomes obstructed or damaged because any of the aforementioned substances were improperly discharged, the person or persons responsible for such discharge shall be billed and shall pay for the expenses incurred by the POTW in cleaning out, repairing or rebuilding the sewer.
(Ord. 1498a, passed 6-18-84) Penalty, see § 53.99

§ 53.23 SPECIAL AGREEMENTS.

No statement contained in this chapter shall be construed as prohibiting any special agreement or arrangement between the POTW and any person whereby an industrial waste of unusual strength or character may be accepted by the POTW for treatment whether with or without pretreatment, provided that such agreement does not violate national categorical pretreatment standards for the specific category of industrial user, provided that there is no impairment of the functioning of the sewage works by reason of the admission of such wastes and provided that no extra costs are incurred by the POTW without recompense by the person.
(Ord. 1498a, passed 6-18-84)

§ 53.24 EXCLUSIONS; SURCHARGES; NEW CONNECTIONS.

(A) All or certain industrial wastes shall be excluded when conditions are such that NPDES permit restrictions cannot be met.

(B) Surcharges shall be imposed by the POTW for any compatible pollutant discharged in excess of the limits set forth herein.

(C) No new connection shall be made unless there is flow capacity available in all down stream sewers, lift stations, force mains and the wastewater treatment plant including capacity for BOD and suspended solids.
(Ord. 1498a, passed 6-18-84) Penalty, see § 53.99

PRETREATMENT STANDARDS; PERMIT, REPORTING AND OTHER REQUIREMENTS**§ 53.40 PRIOR APPROVAL FOR CERTAIN WASTES.**

(A) The admission into the public sewers for any water or wastes having:

- (1) A five-day biochemical oxygen demand greater than 250 parts per million by weight;
- (2) Containing more than 250 parts per million by weight of suspended solids;

(3) Containing any quantity or substances having the characteristics described in § 53.15 (A);
or

(4) Having an average daily flow greater than 25,000 gallons shall be subject to the review and approval of the Superintendent.

(B) Where necessary in the opinion of the Superintendent, the owner shall provide at his expense, such preliminary treatment as may be necessary to:

(1) Reduce the biochemical oxygen demand to 250 parts per million and suspended solids to 250 parts per million by weight;

(2) Reduce the objectionable characteristics or constituents to within maximum limits provided in § 53.15; or

(3) Provide control or flow equalization of such wastes described in § 53.15 (B)(1) through (16) so as to avoid any “slug” loads or excessive loads that may be harmful to the sewage works.
(Ord. 1498a, passed 6-18-84)

§ 53.41 PRETREATMENT FACILITIES.

(A) *Review of wastes.*

(1) When, after making such a review, the Superintendent concludes that, before the person discharges his wastes into the public sewers, he must modify or eliminate those constituents which would be harmful to the structures, processes or operations of the sewage works or injurious to health, then the person shall either modify his wastes at the point of origin or shall provide and operate at his own expense such preliminary treatment or processing facilities as may be determined to be necessary to render his wastes acceptable for admission to the public sewers.

(2) Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against “slugs” that might interfere with or otherwise be incompatible with the sewage works. Where there is reason to believe that the use of equalization tanks or other facilities which have potential for dilution is resulting in dilution, the Superintendent may impose mass limitations on the user employing such tanks or other facilities.

(B) *Prior approval.* Plans, specifications and other pertinent information relating to proposed preliminary treatment and processing facilities shall be submitted to the POTW through the Superintendent’s office for examination and approval and no construction of such facilities shall begin until the POTW has given its written approval. Such approval shall not exempt the person from the obligation to make further reasonable adaptations of such facilities when such adaptations of such facilities prove necessary to secure the results desired. Plans, specifications and other pertinent information shall also be submitted to the Stream Pollution Control Board for approval in accordance with Stream Pollution Control Board Resolution 330 I.A.C. 3-1 through 3-3 (formerly No. SPC 15).

(C) *Operation.* When such preliminary treatment facilities are provided, they shall be maintained continuously in satisfactory and effective operating condition by the person at his own expense and shall be subject to periodic inspection by the Superintendent. The person shall maintain suitable operating records and shall submit to the Superintendent such monthly summary reports of the character of the influent and effluent as the latter may prescribe. The user shall notify the Superintendent immediately of any slug loading as defined herein and in accordance with § 53.15 (B)(7) through (9).
(Ord. 1498a, passed 6-18-84)

§ 53.42 GREASE, OIL AND SAND INTERCEPTORS.

Grease, oil and sand interceptors shall be provided when, in the opinion of the Superintendent, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts or any flammable wastes, sand or other harmful ingredients, except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Superintendent and shall be located as to be readily and easily accessible for inspection, and kept clean at all times. Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, water-tight and equipped with easily removable covers which when bolted in place, shall be gas-tight and watertight, and capable of the maximum flow rate of the pipe installed therein.
(Ord. 1498a, passed 6-18-84)

§ 53.43 MAJOR CONTRIBUTOR PERMITS.

(A) Any industrial user, any other user and any new discharger prior to connecting to the sewer on demand of the Superintendent shall within 90 days of notice provide the POTW with sufficient information to determine if that user be a major contributor, and shall be required to obtain a permit which describes the wastewater constituents and characteristics allowed and which sets forth the applicable surveillance schedule and the monitoring requirements the user shall be subject to in order to discharge into the POTW's sewerage system.

(B) A major contributor permit shall be valid for four years unless process changes are made that, in the opinion of the Superintendent, alter the wastewater constituents and characteristics significantly. In the event of such a change, a new application shall be filed accordingly. A permit shall be renewed by new application at the end of four years. The reapplication for renewal will be subject to normal application fees in force at reapplication. Nothing in a major contributor permit shall constitute an exception to the prohibitions and limitations on wastewater admissibility as set forth herein. Major contributors are subject to all applicable fees, rates and charges set forth in this chapter.
(Ord. 1498a, passed 6-18-84)

§ 53.44 INFORMATION REQUIRED.

In support of the application, the user shall submit, in units and terms appropriate for evaluation, the following information:

(A) Name, address and location (if different from the address);

(B) SIC number according to the *Standard Industrial Classification Manual*, Bureau of the Budget, 1972, as amended;

(C) Wastewater constituents and characteristics including but not limited to those mentioned in § 53.15 of this chapter as determined by a reliable analytical laboratory; sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to § 304(g) of the Act and contained in 40 C.F.R. Part 136, as amended;

(D) Time and duration of contribution;

(E) Average daily wastewater flow rates, including daily, monthly and seasonal variations if any, in gallons per day. All flows shall be measured by verifiable techniques unless cost and feasibility prevent such measurement. In such case, other techniques may be used if approved by the Superintendent.

(F) Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, outfalls, storm sewers, sewer connections, inspection manholes, sampling chambers and appurtenances by the size, location and elevation;

(G) Description of activities, facilities and plant processes on the premises including all materials which are or could be discharged;

(H) Where known, the nature and concentration of any pollutants in the discharge which are limited by any city, state or federal pretreatment standards and a statement regarding whether or not the pretreatment standards are being met on a consistent basis and if not, whether additional operation and maintenance and/or additional pretreatment is required for the user to meet applicable pretreatment standards;

(I) If additional pretreatment and/or operation and maintenance will be required to meet the more stringent of city, state or federal pretreatment standards; the shortest schedule by which the user will provide such additional pretreatment. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard:

(J) The following conditions shall apply to this schedule:

(1) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (e.g., hiring an

engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).

(2) No increment referred to in division (1) above shall exceed nine months for any single step directed toward compliance.

(3) Not later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the Superintendent including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay and the steps being taken by the user to return the construction to the schedule established. In no event shall more than nine months elapse between such progress reports to the Superintendent.

(K) Each product produced by type, amount, process or processes and rate of production;

(L) Type and amount of raw materials processed (average and maximum per day);

(M) Number of employees, hours of operation of plant and proposed or actual hours of operation of pretreatment system;

(N) Description of accident spill prevention control plan;

(O) Any other information as may be deemed by the POTW to be necessary to evaluate the permit application; and

(P) Permit application shall be signed by a principal executive officer of the user.
(Ord. 1498a, passed 6-18-84)

§ 53.45 EVALUATION AND ISSUANCE OF PERMITS; GENERAL DISCHARGE PERMITS.

(A) The POTW will evaluate the data furnished by the user and may require additional information. After evaluation and acceptance of the data furnished, the POTW may issue within 30 days of the date of acceptance, a wastewater contribution permit subject to terms and conditions provided herein. Within the 30-day period, the industrial user may review a draft permit and provide comments to the POTW. The POTW may require compliance by industries in the non-major classification which have a potential for discharging toxicants and prohibited substances by issuance of a general discharge permit.

(B) A general discharge permit may be issued to users which are classified as non-major, informing them of general prohibitive standards, limitations, accidental spill notification requirements, residue disposal requirements, and potential for being sampled by the city and subject to the same requirements of major contributor permits.

(Ord. 1498a, passed 6-18-84)

§ 53.46 MODIFICATION OF PERMITS.

(A) The POTW reserves the right to amend any wastewater discharge permit issued hereunder in order to assure compliance by the POTW with applicable laws and regulations. Within nine months of the promulgation of a national categorical pretreatment standard, the wastewater contribution permit of users subject to such standards shall be revised to require compliance with the standard within the time frame prescribed by such standard. Where a user, subject to a national categorical pretreatment standard, has not previously submitted an application for a wastewater contribution permit as required by §§ 53.43 through 53.45, the user shall apply for a wastewater contribution permit within 180 days after the promulgation of the applicable national categorical pretreatment standard.

(B) In addition, the user with an existing wastewater contribution permit shall submit to the Superintendent within 180 days after the promulgation of an applicable federal categorical pretreatment standard the information required by § 53.44 (I)(8) and (9). All national categorical pretreatment standards adopted after the promulgation of this chapter shall be adopted by the city as part of this chapter. The user shall be informed of any proposed changes in his permit at least 30 days prior to the effective date of change. Any changes or new condition in the permit shall include a reasonable time schedule for compliance.

(Ord. 1498a, passed 6-18-84)

§ 53.47 CONDITIONS OF PERMITS.

(A) Wastewater discharge permits shall be expressly subject to all provisions of this chapter and all other applicable regulations, user charges and fees established by the city. Permits may contain the following:

- (1) The unit charge or schedule of user charges and fees for the wastewater to be discharged to a community sewer;
- (2) Limits on the average and maximum wastewater constituents and characteristics;
- (3) Limits on average and maximum rate and time of discharge or requirements for flow regulations and equalization;
- (4) Requirements for installation and maintenance of inspection and sampling facilities; flow measuring, recording, sampling equipment, size of manhole openings, depths, etc.
- (5) Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, standards for tests and reporting schedules;
- (6) Compliance schedules and compliance schedule reports;
- (7) Requirements for submission of technical reports or discharge reports;

(8) Requirements for maintaining and retaining plant records relating to wastewater discharge as specified by the city, and affording POTW access thereto;

(9) Requirements for notification of the POTW of any new introduction of wastewater constituents or any substantial change in the volume or character of the wastewater constituents being introduced into the wastewater treatment system.

(10) Requirements for notification of slug discharges as per §§ 53.15 (B)(13) and 53.20;

(11) Other conditions as deemed appropriate by the USB to ensure compliance with this chapter; and

(12) Requirements for the industrial user to prepare and submit an accidental spill prevention plan as well as for reporting of spills of prohibited materials.

(B) The terms and conditions of the permit may be subject to modification by the POTW during the term of the permit as limitations or requirements as identified in § 53.15 are modified or other just cause exists. The user shall be informed of any proposed changes in his permit at least 30 days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

(Ord. 1498a, passed 6-18-84)

§ 53.48 TRANSFER OF PERMITS.

Wastewater discharge permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred or sold to a new owner, new user, different premises or a new or changed operation without the approval of the POTW. Any succeeding owner or user shall comply with the terms and conditions of a new permit.

(Ord. 1498a, passed 6-18-84) Penalty, see § 53.99

§ 53.49 REPORTING REQUIREMENTS.

(A) *Compliance schedule reports.* Any non-categorical industry which is not in compliance with the city's ordinance limitations must develop a compliance schedule during which time the industry must meet the city's standards. The schedule should contain increments of progress (hiring engineers, starting construction, etc.), which correspond to specific dates for their completion. These represent major events leading to the operation of pretreatment equipment to meet the city's pretreatment standards. All industrial users subject to these conditions must submit a progress report to the city no later than 14 days following each date in the compliance schedule. This report must include whether it complied with the increment of progress to be met on that date, the reason for delay if the date was not met and the steps being taken to return to compliance. In no event can more than nine months elapse between progress reports.

(B) *Monthly reports.* A major contributor shall conduct self-monitoring and submit notices and self-monitoring reports to the POTW to assess and assure compliance by industrial users with applicable pretreatment standards and requirements. These reports will normally be required on a monthly basis, unless specified otherwise in the users permit conditions or by the Superintendent.

(C) *Baseline report (403.12 (b)).*

(1) Within 180 days after the effective date of a categorical pretreatment standard or 180 days after the final administrative decision made on a category, whichever is later, existing industrial users subject to such categorical pretreatment standards and currently discharging to or scheduled to discharge to a POTW will be required to submit to the Superintendent, U.S. EPA and state a report containing the information listed in division (b)(1)-(7) of 403.12(b).

(2) Upon promulgation of a categorical pretreatment standard, the Control Authority (either U.S. EPA, state or POTW) will provide the appropriate 12(b) form for distribution to the industrial users who are affected by the promulgated standard. The industrial users are then required to submit the completed report to the U.S. EPA, state and POTW.

(D) *Compliance schedule reports (403.12 (c)).*

(1) Industrial users shall comply with the compliance schedule reporting conditions required in 403.12(b)(7). This schedule shall be submitted whenever an industrial user is not meeting categorical pretreatment standards at the time of promulgation of that standard. The schedule contains increments of progress (i.e., hiring an engineer, completing plans, commencing construction, completing construction, etc.), which correspond to specific dates for their completion. These represent major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical pretreatment standard.

(2) All industrial users subject to these conditions must submit a progress report to the control authority no later than 14 days following each date in the compliance schedule including the final date for compliance. This report must include, at a minimum, whether or not it complied with the increment of progress to be met on that date and, if not, the date on which it expects to comply, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event can more than nine months elapse between such progress reports.

(E) *Compliance date report (403.12 (d)).* Within 90 days following the date for final compliance with applicable pretreatment standards whether local, state or federal standard or, in the case of a new source, following commencement of the introduction of wastewater into the POTW, any user subject to pretreatment standards and requirements shall submit to the Superintendent a report indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by pretreatment standards and requirements and the average and maximum daily flow for these process units in the user facility which are limited by such pretreatment standards or requirements. The report shall state whether the applicable pretreatment standards or requirements are being met on a consistent basis and, if not, what additional operation and maintenance and/or pretreatment is necessary to bring the user into compliance with the applicable pretreatment standards or requirements. This statement

shall be signed by an authorized representative of the industrial user, and certified to by a qualified professional.

(F) *Periodic compliance reports (403.12 (e)).*

(1) (a) Any user subject to a pretreatment standard, after the compliance date of such pretreatment standard, or, in the case of a new source, after commencement of the discharge into the POTW, shall submit to the Superintendent during the months of June and December, unless required more frequently in the pretreatment standard or by the Superintendent, a report indicating the nature and concentration, of pollutants in the effluent which are limited by such pretreatment standards. In addition, this report shall include a record of all daily flows which during the reporting period exceeded the maximum daily flow reported in paragraph 503.

(b) Flows shall be reported on the basis of actual measurement provided however, where cost or feasibility constraints justify, the Superintendent may accept reports of average and maximum flows estimated by verifiable techniques.

(c) At the discretion of the Superintendent and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Superintendent may agree to alter the months during which the above reports are to be submitted.

(2) (a) Reports of permittees shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where requested by the Superintendent, of pollutants contained therein which are limited by the applicable pretreatment standards. The frequency of monitoring shall be prescribed in the applicable pretreatment standard. The Superintendent may impose mass limitations on users which are using dilution to meet applicable pretreatment standards or requirements, or in other cases where the imposition of mass limitations are appropriate. In such cases, the report required by division (1) of this paragraph shall indicate the mass of pollutants regulated by pretreatment standards in the effluent of the user. All analysis shall be performed in accordance with procedures established by the Administrator pursuant to § 304(g) of the Act and contained in 40 C.F.R. Part 136 and amendments thereto or with any other test procedures approved by the Administrator.

(c) Sampling shall be performed in accordance with the techniques approved by the Administrator.

Note:

Where 40 C.F.R. Part 136 does not include a sampling or analytical technique for the pollutant in question, sampling and analysis shall be performed in accordance with the procedures set forth in the EPA publication, Sampling and Analysis Procedures for Screening of Industrial Effluent for Priority Pollutants, April, 1977, and amendments thereto, or with any other sampling and analytical procedures approved by an administrator.

(Ord. 1498a, passed 6-18-84)

§ 53.50 CHARGES AND FEES.

(A) *Permit applications.*

(1) Major contributors shall make application for the proposed discharge on a form provided by the city. The permit application shall be supplemented by any plans, specifications, studies or other information considered pertinent by the Superintendent, to evaluate compatibility with the sewerage system. It is the purpose of charges and fees to provide for the recovery of costs from users of the POTW for the implementation of the program established herein. The applicable charges or fees shall be set forth in the POTW’s schedule of charges and fees.

(2) The POTW may adopt charges and fees which may include:

- (a) Fees for reimbursement of costs of setting up and operating the POTW’s pretreatment program;
- (b) Fees for monitoring, inspections and surveillance procedures;
- (c) Fees for reviewing accidental discharge procedures and construction;
- (d) Fees for permit applications;
- (e) Fees for filing appeals;
- (f) Fees for consistent removal (by the POTW) of pollutants otherwise subject to federal pretreatment standards;
- (g) Other fees as the POTW may deem necessary to carry out the requirements contained herein.

(3) These fees relate solely to the matters covered by this chapter and are separate from all other fees chargeable by the POTW.

(B) *Fees.* Permit fees for major contributors shall be as follows:

Initial Major Contributor Permit	Permit Fee
Industries connected to sewerage works prior to the effective date of this chapter	\$ 100

Industries connected to sewerage works after the effective date of this chapter and all reapplication permits

\$ 50

(Ord. 1498a, passed 6-18-84)

§ 53.51 SURVEILLANCE; SURVEY CHARGE.

(A) *Surveillance technique; time periods.*

(1) Surveillance of industrial users for the purposes of verifying industry self-monitoring information will be done at such intervals as determined by the Superintendent to be necessary to detect prohibited discharges. The minimum surveillance schedule to be conducted by the POTW, if deemed warranted by the Superintendent, will be quarterly.

(2) A seven-day monitoring period shall be allowed if deemed warranted in order to obtain representative data. The surveillance period will normally be for a period of one day representative of the normal production day, but can be of longer duration at the discretion of the Superintendent. In cases where the surveillance period extends for a greater number of consecutive days than seven, the POTW shall have the prerogative of selecting the seven consecutive days of its choice for establishing rates and charges.

(3) The POTW may sample and conduct surveillance and inspection activities of major contributing and non-major industries when deemed necessary by the Superintendent to verify independent of information supplied by industrial users, compliance or non-compliance with applicable pretreatment standards. For scheduled surveillance, the user shall be given the option of splitting the obtained sample such that it may be analyzed by the user.

(4) In addition to surveillance monitoring conducted by the POTW, a major contributor shall conduct self-monitoring and submit monthly monitoring reports to the POTW unless specified otherwise in the users permit conditions or by the Superintendent.

(B) *Surveillance survey charge.* The minimum charge for each surveillance survey shall be \$100 per day with a maximum charge for seven days of \$700. Surveillance survey charges are to be adjusted annually if deemed necessary by the Superintendent.

(Ord. 1498a, passed 6-18-84)

§ 53.52 MONITORING REQUIREMENTS.

(A) A major contributor shall install the following at its own expense:

(1) A suitable control manhole (vault), together with such necessary appurtenances in or on each building lateral sewer to facilitate observation, sampling and measurement of the wastewater; and

(2) Such sampling devices as may be reasonably necessary, unless otherwise instructed by the Superintendent.

(B) A user may be required by the Superintendent to install such manholes (vaults) to verify his status either as a major contributor or otherwise. Manholes (vaults), sampling and testing devices shall be provided and maintained to the Superintendent's satisfaction at the expense of the user, but shall be under the control of the POTW. The POTW may provide monitoring equipment during a surveillance period, monitoring equipment shall, unless otherwise specified by the POTW, include a device for automatically measuring and recording flow and a device for automatically taking a composite by-flow sample of wastewater during a 24-hour period. Each monitoring facility should be located on the discharger's premises, except where such location would be impractical. There shall be ample room in or near the sampling facility to allow access, accurate sampling and preparation of samples for analysis. The facilities shall be constructed and maintained in accordance with all applicable local construction codes and specifications.

(Ord. 1498a, passed 6-18-84)

§ 53.53 USE OF ANALYSES.

(A) *Methods and laboratory procedures.* Laboratory procedures used in the examination of industrial wastes shall be those set forth in *Standard Methods*. However, alternative methods for certain analyses of industrial wastes may be used subject to mutual agreement between the Superintendent and the user provided they meet federal requirements as set forth in 40 C.F.R. Part 136 and § 53.49. The POTW shall charge to the user, the standard initial analyses of the user's wastes as well as other non-standard tests as required by the user's specific process waste loading. Regular periodic check analysis and analysis made by the Superintendent at the request of the user shall be charged to the user according to the standard work order billing practice. All such analysis shall be binding in determining strength of wastes surcharges and other matters dependent upon the character and concentration of wastes.

(B) *Use of representative analysis.* Until an adequate analysis of a representative sample of user's wastes has been obtained, the POTW shall, for the purpose of this chapter, make a determination of the character and concentration of the user's wastes by using data based on analysis of similar processes or data for his type of business that are available from the U.S. EPA or from industry-recognized authoritative sources. This method, if selected by the POTW, shall continue at the POTW's pleasure or until an adequate analysis has been made.

(Ord. 1498a, passed 6-18-84)

§ 53.54 DATA SUBJECT TO REVIEW.

All data collected pertaining to industrial wastes including records kept by each industrial user shall be subject to audit and review by the EPA or approval authority upon request. The city shall annually publish in the local newspaper a list of the users which were not in compliance with any pretreatment

requirements or standards at least once during the 12 previous months. The notification shall also summarize any enforcement actions taken against the user(s) during the same 12 months.

(Ord. 1498a, passed 6-18-84)

§ 53.55 CONFIDENTIAL INFORMATION.

(A) Information and data obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the city that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user.

(B) When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available upon written request to governmental agencies for uses related to this chapter, the National Pollutant Discharge Elimination System (NPDES) permit, state disposal system permit and/or the pretreatment programs; provided, however, that such portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

(C) Information accepted by the POTW as confidential, shall not be transmitted to any governmental agency or to the general public by the POTW until and unless a ten-day notification is given to the user and consent of the submitter has been obtained. Any claim of confidentiality must be asserted at the time of submission in the manner prescribed on the application form or instructions, or in the case of other submissions by stamping the words "confidential business information" on each page containing such information. If a claim is asserted, the information will be treated in accordance with the procedures in 40 C.F.R. Part 2 (Public Information).

(Ord. 1498a, passed 6-18-84)

§ 53.56 WASTE HAULERS; PRETREATMENT RESIDUE.

(A) *Waste haulers.*

(1) A person who is a licensed commercial or industrial waste hauler may discharge compatible pollutants to the wastewater treatment plant at a time and place and in such amounts as permitted by the Superintendent.

(2) Application to the Superintendent and approval must be secured prior to any actual dumping along with payment of dump fees as follows:

(a) Septic tank (residential): \$30 per 1000 gallons.

(b) Industrial and/or commercial: \$500 per 1000 gallons.

(3) A listing of all wastes and source information must be submitted with each application.

(B) *Pretreatment residue*. Sludge from an industrial or commercial pretreatment system or liquid wastes and industrial sludges transported by waste haulers shall not be placed into the sewage works. Such sludge and wastes shall be disposed of by a licensed hauler in a site approved by the Indiana State Board of Health in accordance with requirements of §§ 402 (b) and 405 of the Act and §§ 3001, 3004 and 4004 of the *Solid Waste Disposal Act*, as amended by the *Resource Conservation and Recovery Act of 1976*, RCRA P.L. 94-580.

(Ord. 1498a, passed 6-18-84; Am. Ord. 1661, passed 3-2-87)

ADMINISTRATION AND ENFORCEMENT

§ 53.70 SUSPENSION.

(A) The POTW may suspend the wastewater treatment service and/or a wastewater contribution permit when such suspension is necessary, in the opinion of the POTW, in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons, to the environment, causes interference to the POTW or causes violation to any condition of its NPDES permit.

(B) Any person notified of a suspension of the wastewater treatment service and/or the wastewater contribution permit shall immediately stop or eliminate the contribution. In the event of a failure of the person to comply voluntarily with the suspension order, the POTW shall take such steps as deemed necessary including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to any individuals. The POTW shall reinstate the wastewater contribution permit and/or the wastewater treatment service upon proof of the elimination of the non-complying discharge. A detailed written statement submitted by the user describing the causes of the harmful contribution and the measures taken to prevent any further occurrence shall be submitted to the POTW within seven days of the date of occurrence.

(C) The POTW may randomly sample and analyze the effluent from industrial users and conduct surveillance and inspection activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. The results of these surveillance and inspection activities shall be made available to a regional administrator or director upon request.

(Ord. 1498a, passed 6-18-84)

§ 53.71 REVOCATION OF PERMIT.

Any user who violates the following conditions of this section or applicable state and federal regulations is subject to having his permit revoked in accordance with the procedures of this section:

(A) Failure of a user to factually report the wastewater constituents and characteristics of his discharge;

(B) Failure of the user to report significant changes in operations or wastewater constituents and characteristics;

(C) Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring;
or

(D) Violation of conditions of the permit, or this chapter or any final judicial order entered with respect thereto.

(Ord. 1498a, passed 6-18-84) Penalty, see § 53.99

§ 53.72 NOTIFICATION OF VIOLATION; ADMINISTRATIVE ADJUSTMENT.

Whenever the city finds that any user has violated or is violating this chapter, wastewater contribution permit or any prohibition or limitation of requirements contained herein, the city may serve upon such person a written notice either personally or by certified or registered mail return receipt requested, stating the nature of the violation. Within 30 days of the date of receipt of the notice, a plan for the satisfactory correction thereof shall be submitted by the user, either personally or in writing to the city and/or advising of its position with respect to the allegations. Thereafter, the parties shall meet to ascertain the veracity of the allegations and where necessary, establish a plan for the satisfactory correction thereof.

(Ord. 1498a, passed 6-18-84)

§ 53.73 SHOW CAUSE HEARING.

(A) Where the violation of § 53.72 is not corrected by timely compliance by means of the administrative adjustment, the city may order any user which causes or allows conduct prohibited by § 53.71, to show cause before the city or its duly authorized representative, why the proposed permit revocation action should not be taken.

(B) A written notice shall be served on the user by personal service, certified or registered mail, return receipt requested, specifying the time and place of a hearing to be held by the city or its designee regarding the violation, the reasons why the enforcement action is to be taken, the proposed enforcement action and directing the user to show cause before the city or its designee why the proposed enforcement action should not be taken. The notice of the hearing shall be served no less than ten days before the hearing. Service may be made on any agent, officer, or authorized representative of a user. The

proceedings at the hearing shall be considered by the city which shall then enter appropriate orders with respect to the alleged improper activities of the discharger. Appeal of such orders may be taken by the user in accordance with applicable local or state law.
(Ord. 1498a, passed 6-18-84)

§ 53.74 JUDICIAL PROCEEDINGS.

Following the entry of any order by the city with respect to the conduct of a user contrary to the provisions of § 53.71, the City Attorney may, following the authorization of such action by the city commence an action for appropriate legal and/or equitable relief in the appropriate local court.
(Ord. 1498a, passed 6-18-84)

§ 53.75 ANNUAL PUBLICATION OF ENFORCEMENT ACTIONS.

A list of all significant dischargers which were the subject of enforcement proceedings pursuant to this section of this chapter during the 12 previous months, shall be annually published by the city in the largest daily newspaper, published in the municipality in which the city is located, summarizing the enforcement actions taken against the dischargers during the same 12 months whose violations remained uncorrected 45 or more days after notification of non-compliance or which have exhibited a pattern of noncompliance over that 12-month period or which involve failure to accurately report noncompliance.
(Ord. 1498a, passed 6-18-84)

§ 53.76 RIGHT OF APPEAL.

Any user or any interested party shall have the right to request in writing an interpretation or ruling by the city on any matter covered by this chapter and shall be entitled to a prompt written reply. In the event that such inquiry is by a user and deals with matters of performance or compliance with this chapter or deals with a wastewater discharge permit issued pursuant hereto for which enforcement activity relating to an alleged violation which is the subject, receipt of a user's request shall stay all enforcement proceedings pending receipt of the aforesaid written reply. Appeal of any final judicial order entered pursuant to this chapter may be taken in accordance with local and state law.
(Ord. 1498a, passed 6-18-84)

§ 53.77 UPSET IN OPERATIONS; TEMPORARY NONCOMPLIANCE.

(A) Any user which experiences an upset in operations which places the user in a temporary state of noncompliance with this chapter or a wastewater discharge permit issued pursuant hereto shall inform the Superintendent thereof within 24 hours of first awareness of the commencement of the upset. Where such information is given orally, a written follow-up report thereof shall be filed by the user with the POTW within five days. The report shall specify:

(1) Description of the upset, the cause thereof and the upset's impact on a discharger's compliance status;

(2) Duration of noncompliance, including exact dates and times of noncompliance, and if the noncompliance continues, the time by which compliance is reasonably expected to occur; and

(3) All steps taken or to be taken to reduce, eliminate and prevent recurrence of such an upset or other conditions of noncompliance.

(B) A documented and verified bonafide operating upset shall be an affirmative defense to any enforcement action brought by the city against a user for any noncompliance with the chapter or any wastewater discharge permit issued pursuant hereto, which arises out of violations alleged to have occurred during the period of the upset if the requirements of 40 C.F.R. 403.16(c) are met.

(Ord. 1498a, passed 6-18-84)

§ 53.78 FALSIFYING INFORMATION.

Any person who knowingly makes any false statements, representation, record, report, plan or other document filed with the city or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under these regulations shall be considered in violation of this chapter.

(Ord. 1498a, passed 6-18-84) Penalty, see § 53.99

§ 53.79 RECOVERY OF COSTS INCURRED BY THE CITY.

Any user violating any of the provisions of this chapter or causes a discharge, producing a deposit or destruction or causes damage to or impairs the POTW shall be fined not less the \$1,000 not more than \$2,500 per day, per violation, for the first violation, nor more than \$7,500 per day, per violation or any subsequent violation and shall furthermore be liable to the city for any expense, loss or damage caused by the violation or discharge. The city shall bill the user for costs incurred by the city for any cleaning, repair or replacement work caused by the violation or discharge. Refusal to pay the assessed costs shall constitute a violation of this chapter enforceable under the provisions of §§ 53.70 through 53.78.

(Ord. 1498a, passed 6-18-84; Am. Ord. 2164, passed 11-5-12) Penalty, see § 53.99

§ 53.80 RIGHT TO ENTER AND INSPECT PRIVATE PROPERTIES.

(A) The Superintendent and other duly authorized employees of the utility bearing proper credential and identification shall be permitted to enter all properties for the purpose of inspection, observation, measurement, sampling and testing in accordance with the provisions of this chapter. Entry shall normally be made during daylight or operating hours or at reasonable times. The Superintendent or his representative shall have no authority to inquire into any processes beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways of facilities for waste treatment.

(B) While performing the necessary work on private properties referred to in division (A) above, the Superintendent or duly authorized employees of the utility shall observe all safety rules applicable to the premises established by the company and the city shall indemnify the company against loss or damage to its property by utility employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation except as such may be caused by negligence or failure of the company to maintain safe conditions.

(C) The Superintendent and other duly authorized employees of the utility bearing proper credentials and identification shall be permitted to enter all private properties through which the city holds a duly negotiated easement for the purpose of, but not limited to inspection, observation, measurement, sampling, repair and maintenance of any portion of the sewerage works lying within the easement. All entry and subsequent work, if any, on the easement shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

(Ord. 1498a, passed 6-18-84)

§ 53.81 RECORDS RETENTION.

(A) All users subject to this chapter shall retain and preserve for no less than five years any records, books, documents, memoranda, reports, correspondence and any and all summaries thereof, relating to monitoring, sampling and chemical analysis made by or in behalf of a user in connection with its discharge. All records which pertain to matters which are the subject of administrative adjustment or any other enforcement or litigation activities brought by the city pursuant hereto shall be retained and preserved by the user until all enforcement activities have concluded and all periods of limitation with respect to any and all appeals have expired.

(B) The POTW shall retain and preserve all permit files, records and enforcement activity records for no less than five years.

(Ord. 1498a, passed 6-18-84) Penalty, see § 53.99

§ 53.99 PENALTY.

(A) Any user who is found to have violated any provision of this chapter for which no other specific penalty is provided shall be subject to the penalty set forth in § 10.99.

(B) Any user who is found to have violated an order of the city or who has failed to comply with any provision of this chapter and the regulations or rules of the city or orders of any court of competent jurisdiction, may be subjected to the imposition not only the general ordinance violation penalty set forth in § 10.99, but also civil penalties as prescribed by law.

TITLE VII: TRAFFIC CODE

Chapter

70. GENERAL REGULATIONS

71. TRAFFIC RULES

72. PARKING

73. RECREATIONAL VEHICLES

74. TRAFFIC SCHEDULES

75. PARKING SCHEDULES

76. ALTERNATIVE TRANSPORTATION

CHAPTER 70: GENERAL REGULATIONS

Section

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- 70.01 Scope
- 70.02 Definitions
- 70.03 Public officials and employees not exempt
- 70.04 Removal of illegal vehicles
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Traffic-Control Devices

- 70.20 Manual for uniform devices
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- 70.22 Erection of signs, signals and markings
- 70.23 Traffic devices required for enforcement
- 70.24 Display of unauthorized signs, signals and markings
- 70.25 Interference with devices
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GENERAL REGULATIONS

§ 70.01 SCOPE.

(A) This title shall be known and cited as and hereinafter referred to as the Elwood Traffic Code.

(B) The provisions of this code refer to the operation of vehicles on the streets and highways of the city, except where a different place is specifically referred to in a given section.

(C) Every person riding an animal or driving any animal drawn vehicle or bicycle shall be subject to the provisions of this code applicable to the driver of a vehicle, except those provisions of this code which by their nature have no application.

(D) The provisions of this code shall in no way limit, alter or otherwise affect the civil or criminal responsibility of any person under the laws otherwise of the state.
(Ord. 1924a, passed - -2000)

§ 70.02 DEFINITIONS.

For the purpose of this title, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ALLEY. Any publicly maintained thoroughfare designed and constructed primarily for the use of service vehicles which entry is made to the rear entrance of the majority of residences or business establishments adjoining.

AUTHORIZED EMERGENCY VEHICLE. Vehicles of the Fire Department, Police Department, ambulances, and such emergency vehicles for public service corporation vehicles as are designated or authorized as such by the Board of Public Works and Safety.

BUS. Every motor vehicle designed for carrying passengers for hire and used for the transportation of persons, and every motor vehicle other than a taxicab, designed or used for the transportation of persons for compensation.

BUSINESS DISTRICT. The territory contiguous to and including a highway when 50% or more is occupied by buildings in use for business.

CONGESTED AREA. That portion of the city bounded on the north by the north side of North "A" Street, on the south by the Nickel Plate Railroad, on the west by 14th Street and on the east by 18th Street.

CROSSWALK.

(1) That position of a roadway at an intersection included within the prolongation or connection of the lateral lines of the sidewalks from the curb to the opposite curbs when unmarked.

(2) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

DRIVER. Every person who drives or is in actual physical control of a vehicle.

INTERSECTION. The area embraced within the prolongation or connection of the lateral curb lines, or if none, then the lateral boundary lines of the roadways of the two highways which join one another at, or approximately at, right angles, or the area within vehicles traveling on different highways joining at any other angle may come in conflict.

MOTORCYCLES. Every motor vehicle having a saddle for the use of the rider and designated to travel on not more than three wheels in contact with the ground but excluding a tractor.

MOTOR VEHICLE. Every vehicle which is self-propelled.

OFFICIAL TRAFFIC-CONTROL DEVICES. All signs, signals, markings and devices, not inconsistent with the Traffic Code, placed or erected by authority of the Common Council or official having jurisdiction, for the purpose of regulating, warning or guiding traffic.

OFFICIAL TRAFFIC-CONTROL SIGNAL. Any device not inconsistent with the Traffic Code whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

OWNER. A person who holds the legal title of a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase on performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then the conditional vendee or lessee or mortgagor shall redeem the **OWNER** for the purpose of the Traffic Code.

PEDESTRIAN. Any person on foot.

POLICE OFFICER. Every officer authorized to direct or regulate traffic or to make arrest for violations of traffic regulations in the city.

PRIVATE ROAD or **DRIVEWAY.** Every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons.

RAILROAD. A carrier of persons or property on cars, other than street cars, operated on stationary rails.

RESIDENCE DISTRICT. The territory contiguous to and including a highway not comprising a business district, when the property on the highway for a distance of 500 feet or more is improved with residence or residences and building in use for business.

RIGHT-OF-WAY. The privilege of the immediate use of the highway.

ROADWAY. That portion of a street or highway improved, designed or ordinarily used for vehicular travel, except the berm or shoulder.

SCHOOL CROSSING GUARD. A person employed to regulate students crossing intersections on their way to and from school.

SIDEWALK. That portion of a street between the curb lines or the lateral lines of the roadway and the adjacent property lines, intended for the use of pedestrians.

STREET or **HIGHWAY**. The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for the purpose of vehicular travel.

THROUGH HIGHWAY. Every highway or portion thereof at the entrances to which vehicular traffic from intersection highways is required by law to stop before entering or crossing the same, and where stop signs are erected as provided in this Traffic Code.

TRUCK. Every motor vehicle designed, used or maintained primarily for the transportation of property.

VEHICLE. Every device, including bicycles, in, on or by which any person or property is or may be transported or drawn on a highway except devices, other than bicycles moved by human power or used exclusively on stationary rails or tracks.

(Ord. 1924a, passed - -2000)

§ 70.03 PUBLIC OFFICIALS AND EMPLOYEES NOT EXEMPT.

The provisions of the Elwood Traffic Code applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, the state or any county, city, town, district or any other political subdivision of the state subject to the specific exceptions as are set forth in this Traffic Code with reference to authorized emergency vehicles.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - 2000)

§ 70.04 REMOVAL OF ILLEGAL VEHICLES.

Whenever any police officer finds a vehicle standing on a highway in violation of any of the provisions of the Elwood Traffic Code, the officer is authorized to move the vehicle at the owner's expense or to require the driver or other person in charge of the vehicle to move the same, to a position off the paved or improved or main traveled part of the highway.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000)

§ 70.05 OBEDIENCE TO PUBLIC OFFICIALS.

No person shall willfully fail or refuse to comply with any lawful order or direction of a police officer or fire official.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 10.99

§ 70.06 OBEDIENCE TO CROSSING GUARDS.

No person shall willfully fail or refuse to comply with any lawful order or directive of any school crossing guard while he or she is in the performance of his or her duty in traffic control.
(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 10.99

TRAFFIC-CONTROL DEVICES

§ 70.20 MANUAL FOR UNIFORM DEVICES.

All traffic-control devices, including signs, signals, devices and markings placed on or adjacent to streets or highways in the city shall be in accordance with the *Manual on Uniform Traffic-Control Devices for Streets and Highways*, as published by the United States Department of Transportation Federal Highway Administration.
(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000)

§ 70.21 OBEDIENCE OF OFFICIAL DEVICES.

The driver of any vehicle shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with the Traffic Code or other ordinances of the city, unless otherwise directed by a police officer, subject to the exceptions granted the driver of any authorized emergency vehicle, as hereinafter provide.
(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 10.99

§ 70.22 ERECTION OF SIGNS, SIGNALS AND MARKINGS.

The Chief of Police of the city, by and with the approval of the Board of Public Works and Safety, is empowered and authorized to erect and install traffic signs, signals and markings as authorized by the Traffic Code and to make regulations necessary to make effective the provisions of the Traffic Code or temporary conditions.
(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000)

§ 70.23 TRAFFIC DEVICES REQUIRED FOR ENFORCEMENT.

No provisions of the Traffic Code or other ordinances for which signs or markings are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person.

Whenever a particular section does not state that signs are required, the section shall be effective even though no signs are erected or in place.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000)

§ 70.24 DISPLAY OF UNAUTHORIZED SIGNS, SIGNALS AND MARKINGS.

(A) No person shall place, maintain or display on or in view of any street or highway any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic-control device or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic-control device or any sign or signal.

(B) No person shall place or maintain nor shall a traffic engineer permit on any street or highway any traffic sign or signal bearing thereon any commercial advertising.

(C) This section shall not be deemed to prohibit the erection on private property adjacent to streets or highways or signs giving useful information and of a type that cannot be mistaken for official signs. (Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 10.99

§ 70.25 INTERFERENCE WITH DEVICES.

No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down or remove any official traffic-control device or any inscription, shield or insignia thereon, or any other part thereof.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 10.99

§ 70.26 SIGNAL LEGEND.

Whenever traffic is controlled by traffic-control signals exhibiting the words “go,” “caution” or “stop” or exhibiting different colored lights successively, the following colors only shall be used and the terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(A) *Green or green accompanied by the word “go.”* Vehicular traffic facing the signal may proceed straight through or turn right or left, unless a sign at the place prohibits either turn. Vehicular traffic shall yield right-of-way to other vehicles and to pedestrians within the intersection at the time the signal is exhibited.

(B) *Yellow or “caution” when shown with or following the green or “go” signal.*

(1) Vehicular traffic facing the signal shall stop before entering the nearest crosswalk at the intersection, but if the stop cannot be made in safety, vehicles may be driven cautiously through the intersection.

(2) Pedestrians facing the signal are thereby advised that there is insufficient time to cross the roadway and any pedestrian then starting to cross shall yield the right-of-way to all vehicles.

(C) *Red alone or accompanied with the word "stop."*

(1) Vehicular traffic facing a circular red signal alone shall stop at clearly marked stop line, but if none, before entering the crosswalk to the near side of the intersection, or if none, then before entering the intersection, and shall remain there until an indication to proceed is shown except as provided in division (2) below;

(2) Except when a sign is in place of prohibiting such a turn, vehicular traffic facing a steady red signal, after coming to a complete stop, may cautiously enter the intersection to:

(a) Make a right turn;

(b) Make a left turn if turning from the left lane on a one-way street into another one-way street with the flow of traffic; or

(c) Proceed straight ahead if the intersecting highway serves traffic only to or from the left; but vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic using the intersection; and

(d) Red with a green arrow allows vehicular traffic facing it to cautiously enter the intersection only to make the movement indicated by the arrow, but shall yield right-of-way to pedestrians lawfully within a crosswalk and to other traffic.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000)

§ 70.27 FLASHING SIGNALS.

Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal, it shall require obedience by vehicular traffic as follows:

(A) *Flashing red (stop signal)*. When a red lens is illuminated with intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked, or if none, then before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

(B) *Flashing yellow (cautious signal)*. When a yellow lens is illuminated with intermittent flashes, drivers of vehicles may proceed through the intersection or past only with caution.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000)

§ 70.28 VEHICLE INSPECTION FEES.

Whenever the Police Department performs an inspection under I.C. 9-17-2-12, or a successor statute, the requesting party shall pay a fee of \$5 for each vehicle inspection. The fees collected for these inspections shall be paid to the Local Law Enforcement Continuing Education Fund established by I.C. 5-2-8-2.

(Ord. 2038, passed 4-3-06)

CHAPTER 71: TRAFFIC RULES

Section

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- 71.02 Right-of-way
- 71.03 Stop streets designated
- 71.04 Vehicles to stop at stop signs
- 71.05 Vehicles entering yield intersections
- 71.06 Emerging from alleys, driveways and buildings
- 71.07 Stopping when traffic is obstructed
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- 71.09 One-way streets and alleys
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GENERAL REGULATIONS**§ 71.01 SPEED LIMITS.**

(A) The laws of the state establishing or regulating speed limits for vehicles on public streets or highways shall apply to all public streets or highways within the city, except in the circumstances where, as properly authorized by state law as set forth in I.C. 9-21-5-6, limits have been increased or decreased by local authorities on the basis of an engineering and traffic investigation which has determined such increase or decrease to be safe and reasonable.

(B) In such circumstances it shall be unlawful for any person to drive or operate a vehicle in excess of any speed so determined, when signs are in place giving notice thereof. The speed limits as determined by prior studies and the location thereof are set forth under Traffic Schedule I of this Traffic Code.

(1) It shall be unlawful for any person to drive or operate a motor vehicle, motorcycle, truck or bus on any public way within the confines of any public park located and situated within the city limits at a speed greater than 15 miles per hour.

(2) It shall be unlawful for motor vehicles to travel at a speed in excess of 20 miles per hour in all school zones and school playground area within the city limits when children are present. A school zone playground area is that area extended 300 feet beyond the school ground boundaries and school playground areas in all directions on streets passing along and adjacent to the school boundaries and school playground areas.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 10.99

§ 71.02 RIGHT-OF-WAY.

The operator of a vehicle shall yield the right-of-way at any intersection of two or more roads, alleys or highways which cross each other to a vehicle approaching from the right, except as otherwise excepted.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000)

§ 71.03 STOP STREETS DESIGNATED.

Those streets and parts of streets described in Traffic Schedule VIII are declared to be stop streets. When signs are erected giving notice thereof, drivers of vehicles shall stop at every intersection before entering any of the street and parts of streets therein described.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000)

§ 71.04 VEHICLES TO STOP AT STOP SIGNS.

(A) When stop signs are erected at or near the entrance to any intersection, every driver of a vehicle approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection, or in the event there is no crosswalk, shall stop at a clearly marked stop line, but if none, then at the point nearest the intersection roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection, except when directed to proceed by a police officer or traffic-control signal.

(B) After the driver of a vehicle has stopped at the entrance to a through highway, the driver shall yield the right-of-way to other vehicles which have entered the intersection from the through highway or which are approaching so closely on the through highway as to constitute an immediate hazard, but the driver having so yielded, may proceed and the drivers of all other vehicles approaching the intersection on the through highway shall yield the right-of-way to the vehicle so proceeding into or across the through highway.

(C) After the driver of a vehicle has stopped in obedience to a stop sign at an intersection where a stop sign is erected at one or more entrances thereto, although not a part of a through highway, the driver shall proceed cautiously, yielding to vehicles not so obliged to stop which are within the intersection or approaching so closely as to constitute an immediate hazard, but may then proceed.
(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000)

§ 71.05 VEHICLES ENTERING YIELD INTERSECTIONS.

(A) The driver of a vehicle approaching a yield right-of-way street intersection sign, as described in Traffic Schedule V, shall slow to a speed of not more than ten miles per hour, and yield right-of-way to all vehicles approaching from the right and left on their intersection street, which are so close as to constitute an immediate hazard.

(B) If a driver is involved in a collision at an intersection, or interferes with the movement of other vehicles after driving past a yield sign, the collision or interference shall be deemed prima facia evidence of the driver's failure to yield right-of-way.
(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000)

§ 71.06 EMERGING FROM ALLEYS, DRIVEWAYS AND BUILDINGS.

The driver of a vehicle emerging from an alley, driveway or building shall stop the vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway, yielding the right-of-way to any pedestrian as may be necessary to avoid collision, and on entering the roadway shall yield the right-of-way to all vehicles approaching on the roadway.
(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000)

§ 71.07 STOPPING WHEN TRAFFIC IS OBSTRUCTED.

No driver shall enter an intersection or marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic-control signal indications to proceed. (Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 10.99

§ 71.08 CROSSING OR MARKED TRAFFIC LANES.

Where traffic lanes have been marked in accordance with this section, it shall be unlawful for the operator of any vehicle to fail or refuse to keep the vehicle within the boundaries of any lane, except when lawfully passing another vehicle or preparatory to making a lawful turning movement. (Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 10.99

§ 71.09 ONE-WAY STREETS AND ALLEYS.

On those streets and parts of streets and in those alleys described herein, vehicular traffic shall move only in the directions when signs indicating the direction of traffic are erected and maintained at every intersection where movement in the opposite direction is prohibited. (Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000)

§ 71.10 DRIVING ON PLAY STREETS.

Whenever signs are erected in accordance with this code indicating any street or part thereof as a play street, no person shall drive a vehicle on any street or portion thereof except drivers of vehicles having business or whose residences are within coded areas, and then any driver shall exercise the greatest care in driving on any street or portion thereof. (Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 10.99

§ 71.11 DRIVING ON SIDEWALKS.

The driver of vehicle shall not drive within any sidewalk area except at an approved driveway site which complies with the driveway standards provided by law. (Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 10.99

§ 71.12 LIMITATIONS ON BACKING.

The driver of a vehicle shall not back the same into a intersection or over a crosswalk unless the movement can be made with reasonable safety and without interfering with other traffic.
(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 10.99

§ 71.13 QUIET ZONE.

Whenever authorized signs are erected in accordance with this code indicating a zone of quiet, no person operating a motor vehicle shall sound the horn or other warning device of the vehicle, except in an emergency.
(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 10.99

§ 71.14 USE OF HORNS AND OTHER NOISES.

It shall be unlawful to sound any horn, signal device or attachment on a motor vehicle except as a necessary warning of danger to persons or property or notification of presence of motor vehicle. It shall be unlawful to create any grating, screeching, grinding or squeaking noise, loud reports or shots or other noises in the use of motor vehicles or appurtenances attached thereto.
(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 10.99

§ 71.15 MOTORCYCLES.

A person operating a motorcycle shall ride only on the permanent and regular seat attached thereto, and the operator shall not carry any other person nor shall any other person ride on a motorcycle unless the motorcycle is designed to carry more than one passenger, in which event a passenger may ride on the permanent and regular seat if designed for two persons, or another seat firmly attached to the rear side of the operator.
(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000)

§ 71.16 OPERATION OF EMERGENCY VEHICLES.

(A) The driver of an authorized emergency vehicle, when responding to an emergency call, when in the pursuit of an actual or suspended violator of the law or when responding to but not on returning from a fire alarm, may exercise the privileges set forth herein, but subject to the conditions stated.

(B) The driver of an authorized emergency vehicle may:

- (1) Park or stand, irrespective of the provisions of the Traffic Code or other ordinance;

(2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(3) Exceed the prima facie speed limits so long as he does not endanger life or property; and/or

(4) Disregard regulations governing direction of movement or turning in specified directions.

(C) The exemptions herein granted to authorized emergency vehicles shall apply only when the driver of any vehicle, while in motion, sounds audible signal by bell, siren or exhaust whistle as may be reasonably necessary, and when the vehicle is equipped with at least one lighted lamp displaying red light visible under normal atmospheric conditions from a distance of 500 feet to the front of the vehicle, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle.

(D) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall the provisions protect the driver from the consequences of his reckless disregard for the safety of others.

(E) The driver of an authorized emergency vehicle while running red lights and siren shall notify radio control for the city of their location and route of travel and continue to notify control as to any changes in their route of travel during the emergency run.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000)

§ 71.17 APPROACH OF EMERGENCY VEHICLES.

(A) On the immediate approach of an authorized emergency vehicle equipped with at least one lighted lamp exhibiting a red light visible under normal atmospheric conditions from a distance of 500 feet to the front of the vehicle, other than police vehicle when operated as an authorized emergency vehicle, and when the driver is giving audible signal by siren, exhaust whistle or bell, the driver of every other vehicle shall yield right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of an intersection and shall stop and remain in the position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

(B) Each driver in a funeral or other procession shall drive as near to the right-hand edge of the roadway as practical and shall follow the vehicle ahead as closely as is practical and safe.

(C) No driver of a vehicle shall drive between the vehicles comprising a funeral or other authorized procession while they are in motion and when the vehicles are conspicuously designated as required in the code. This provision shall not apply at intersections where traffic is controlled by traffic-control signals or police officers.

(D) A funeral composed of a procession of vehicles shall be identified as such by the display on the outside of each vehicle a pennant or other identifying insignia and by the operation of the headlights of vehicles, or by other methods as may be determined and designated by the Police Department.
(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000)

TURNING MOVEMENTS

§ 71.30 TURNING AT INTERSECTIONS.

The driver of a vehicle intending to turn at intersection shall do as follows:

(A) *Right turns.* The approach for a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(B) *Left turns on two-way roadway.* At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in the portion of the right half of the roadway nearest the center line thereof and by passing to the right of the centerline where it enters the intersection to the left of the center of the intersection, where both streets are one-way.

(C) *Left turns on other than two-way roadways.* At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any intersection in the extreme left-hand lane lawfully available to entering the intersection and the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in the direction on the roadway being entered.
(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000)

§ 71.31 TURNING MARKERS.

When markers, buttons or other indications are placed within an intersection in accordance with § 70.23 herein indicating the course to be traveled by vehicles, no driver of a vehicle shall disobey the direction of the indications at locations shown in Traffic Schedule II.
(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 10.99

§ 71.32 NO TURN SIGNS.

Whenever, in accordance with this code, signs are erected indicating that no right turn, no left turn, no U-turn or no turn on red is permitted, no driver of a vehicle shall disobey the directions indicated on any sign.
(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 10.99

§ 71.33 LIMITATIONS ON TURNING AROUND.

The driver of any vehicle shall not turn the vehicle so as to proceed in the opposite direction on any street in any congested area and shall not on any other street so turn a vehicle unless the movement can be made in safety and without interfering with other traffic.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 10.99

PEDESTRIANS**§ 71.45 USE OF CARE IN AVOIDING PEDESTRIANS.**

Every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian on any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution on observing any child or any confused or incapacitated person on a roadway.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000)

§ 71.46 PEDESTRIAN CONTROL SIGNALS; CROSSWALKS.

(A) Whenever special pedestrian control signals exhibiting the words “walk,” “wait” or “don’t walk” are in place the signals shall indicate as follows:

(1) “Walk.” Pedestrians facing the signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by all vehicles.

(2) “Wait” or “Don’t Walk.” No pedestrian shall start to cross the roadway in the direction of the signal, but any pedestrian who has partially completed his crossing on the walk signal shall proceed to a sidewalk or a safety zone while the wait signal is showing.

(B) When traffic-control signals are not in the place or not in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping, if need be, to so yield to a pedestrian crossing the roadway within a crosswalk when the pedestrian is on the half of the roadway on which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

(C) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass the stopped vehicle.

(D) Pedestrians shall move, whenever practicable, on the right half of crosswalks.

(E) No pedestrian shall cross a roadway at any place other than by route at right angles to the curb

or by the shortest route to the opposite curb, except in a crosswalk.

(F) Every pedestrian shall cross a roadway at any place other than by within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles on the roadway.

(G) Between adjacent intersections at which traffic-control signals are in operation, pedestrians shall not cross at any place except in a crosswalk.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000)

§ 71.47 WALKING ALONG ROADWAY.

(A) Where sidewalks are provided it shall be unlawful for any pedestrian to walk along and on an adjacent roadway.

(B) Where sidewalks are provided, any pedestrian walking along and on a highway shall, when practicable, walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 10.99

§ 71.48 ROLLER SKATES, COASTERS AND THE LIKE.

No person on roller skates or riding in or by means of any coaster, vehicle or similar device shall go on any roadway except while crossing a street on a crosswalk and when so crossing, the person shall be granted all of the rights and shall be subject to all of the duties applicable to pedestrians.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 10.99

§ 71.49 ATTACHING TO VEHICLES.

No person as a pedestrian, riding a bicycle, coaster, roller skates, sled or toy vehicle, shall attach the same or himself to any vehicle on a roadway, by any means.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 10.99

CHAPTER 72: PARKING

Section

- 72.01 Parking zones created
- 72.02 Handicap parking
- 72.03 Narrow streets
- 72.04 Parking adjacent to schools
- 72.05 Entrances to public places
- 72.06 Stopping, standing and parking prohibited in certain areas
- 72.07 Prohibited parking on designated streets
- 72.08 Limited parking on designated streets
- 72.09 Vehicles too close to curb
- 72.10 Removal of vehicles during street sweeping or repair
- 72.11 Street cleaning
- 72.12 Washing, repair or display prohibited
- 72.13 Commercial vehicles or trucks
- 72.14 Fire lane
- 72.15 Over-time parking
- 72.16 Width of vehicle limited
- 72.17 Parking during snow emergencies
- 72.18 Angle and/or diagonal parking

- 72.99 Penalty

§ 72.01 PARKING ZONES CREATED.

The purpose of this chapter is to prohibit or limit the parking of vehicles on certain public streets in the city. To effect the purpose, the Chief of Police, with the approval of the Board of Works and Public Safety shall fix certain zones on the public streets in the city where there shall be no parking or parking for a limited time only. Parking zones so fixed shall be marked with appropriate signs indicating the type of parking permitted there, and the time limitations thereof.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000)

§ 72.02 HANDICAP PARKING.

There is hereby established handicap parking zone locations for those persons that have been classified as handicapped according to regulations that qualify them for handicap registration plates for motor vehicles. Persons having temporary handicap conditions must qualify and obtain a handicapped

sticker for their motor vehicle in order to qualify for use of parking locations. The locations for handicapped persons shall be determined by the Chief of Police, with the approval of the Board of Works and Public Safety. Parking zones so fixed shall be marked with appropriate signs.
(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000)

§ 72.03 NARROW STREETS.

When signs prohibiting parking are erected or markings are painted on narrow streets, no person shall park a vehicle at any designated places.
(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 72.99

§ 72.04 PARKING ADJACENT TO SCHOOLS.

When signs are erected or markings painted on an approach to hazardous or congested places, no persons shall stop, stand or park a vehicle in any designated place.
(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 72.99

§ 72.05 ENTRANCES TO PUBLIC PLACES.

(A) No person shall stop, stand or park any vehicle on a street in a manner or under the conditions as to leave available less than ten feet of the width of the roadway for free movement of vehicular traffic, except that a driver may stop temporarily during the actual loading or unloading of passengers or when necessary in obedience to traffic regulations, traffic, traffic signs, signals or a police officer.

(B) No person shall park a vehicle within an alley in the space between the property lines.

(C) When official signs or markings are erected or painted giving notice thereof, no person shall park a vehicle at any time on the streets or parts of streets, except for the purpose of loading or unloading materials, merchandise or passengers, and at no time for a period to exceed three minutes at the entrances of any church, school, hotel, theater, motion picture house, hospital, railway station, bus station, public meeting place or hall, fire and police station.
(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 72.99

§ 72.06 STOPPING, STANDING OR PARKING PROHIBITED IN CERTAIN AREAS.

No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or to avoid conflict with law or the directions of a police officer or traffic-control device in any of the following places:

(A) On a sidewalk;

(B) On the area between the roadway and sidewalk;

(C) On a crosswalk;

(D) Alongside or opposite any street excavation or obstruction when such stopping, standing or parking would obstruct traffic;

(E) On the roadway side of any vehicle stopped or parked at the edge of curb or a street;

(F) On any bridge or other elevated structure on any street or highway within the city; and

(G) At any place where an official sign prohibits stopping or parking.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 72.99

§ 72.07 PROHIBITED PARKING ON DESIGNATED STREETS.

(A) No person shall stand or park a vehicle, except when necessary to avoid conflict with other traffic or to avoid conflict with law or the directions of a police officer or traffic-control device in any of the following places:

(1) In front of public or private driveway;

(2) Within 15 feet of a fire hydrant;

(3) Within 20 feet of a crosswalk at an intersection;

(4) Within 30 feet of the approach to any flashing beacon, stop sign or traffic-control signal located at the side of a roadway;

(5) Within 50 feet of the nearest rail of a railroad crossing; and

(6) Within 20 feet of the driveway entrance to the fire station or on side of a street opposite the fire station.

(B) No person shall move a vehicle not owned by the person into any prohibited area or away from a curb to a distance that is unlawful.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 72.99

§ 72.08 LIMITED PARKING ON DESIGNATED STREETS.

(A) *Parking limited in designated places.* When official signs are erected giving notice thereof, no person shall park a vehicle at any time on any of the streets or parts of streets described as no parking areas in this code.

(B) *Special parking limits in designated places.* When signs are erected in special designated places, no person shall park a vehicle longer than the stated time at those places.

(C) *Parking limited on designated streets.* No person shall park a vehicle longer than the times indicated for designated streets except Sundays and holidays.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 72.99

§ 72.09 VEHICLES TOO CLOSE TO CURB.

No person shall stand or park a vehicle in a roadway other than parallel with the edge of the roadway, headed in the direction of traffic and with the curb side wheels of the vehicle within 12 inches of the edge of the roadway, except as provided in the following divisions:

(A) On those streets which have been marked or signed for angle parking, vehicles shall be parked at the angle to the curb indicated by marks or signs.

(B) In places where, and at hours when, stopping for the loading or unloading of merchandise or materials is permitted, vehicles used for the transportation of merchandise or materials may back into the curb to take on or discharge loads.

(C) One loading or unloading space only is allowed for each business establishment having a rear or alley loading zone.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 72.99

§ 72.10 REMOVAL OF VEHICLES DURING STREET SWEEPING OR REPAIR.

(A) During any period when the roadway and gutters or other parts of any streets, alleys or public way are being swept, sprinkled, flushed or otherwise cleaned by the Street Department or are being repaired and signs are posted or other notice is given to the public to such effect, no vehicle shall be parked or left thereon or any other objects placed so as to obstruct and interfere with sweeping, cleaning or repair of any street, alley or public way.

(B) When any vehicle is found by or reported to an officer of the Police Department to be parked or standing on any street or public way in violation of this section, the officer may order and effect the removal of any vehicle from the street, alley or other public place and cause it to be impounded and stored at any place of business in the city having storage space and facilities available, and any charges for the removal and storage shall be paid by the owner or his agent or representative to the person who operates or has charge of the place of storage before the surrender of the vehicle. The removal, impounding and storage of a vehicle pursuant to this section shall in no way bar or prevent the prosecution of any person violating the terms of this section or in any way relieve him from the penalties prescribed herein or in other ordinances of the city or of any statute, but remedies and penalties are declared to be distinct and separate as means of enforcing obedience to this section.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 72.99

§ 72.11 STREET CLEANING.

The Street Commissioner of the city is authorized and empowered to lay out, design and effect street cleaning schedules in such manner as the Commissioner may deem fit and proper to effect the most effective street cleaning program. The Street Commissioner may also designate the items and the hours when streets, alleys or public ways shall be cleaned, swept or flushed. The Commissioner however shall take into consideration the times and hours that will least interfere with the use of the streets, alleys or public ways by the general public, particularly in the downtown area. The Street Commissioner shall cause signs to be made, which signs shall bear the day and the hours during which parking is prohibited, the signs and the lettering thereon shall be of sufficient size to be clearly legible and all streets, alleys and public way shall be posted with signs in such a manner as to give notice to the public generally of the scheduled street cleaning or repair.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000)

§ 72.12 WASHING, REPAIR OR DISPLAY PROHIBITED.

No person shall stand or park a vehicle on any roadway for the principal purpose of displaying it for sale or for washing, greasing or repairing the vehicle, except repairs necessitated by an emergency. (Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 72.99

§ 72.13 COMMERCIAL VEHICLES OR TRUCKS.

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

COMMERCIAL VEHICLES. Every vehicle, regardless of motor power used to transport any person or property for hire except vehicles of a public utility carrier.

TRUCK. Every motor vehicle designed, used and maintained primarily for the transportation of property.

(B) *Business district, night parking.* It shall be unlawful for the owner, operator or driver of any truck or commercial vehicle as defined in division (A) or for any person in charge of the same to park the vehicle on any street or alley in the business or commercial district of this city between the hours of 12:00 midnight and 6:00 a.m. for a period of time longer than one hour.

(C) *Residential, districts.* It shall be unlawful for the owner, operator or driver of any truck or commercial vehicle, as defined in division (A), or for any person in charge of the same to park the same or to permit any vehicle to be parked or stand on any street or alley in a residential district in this city for a period of longer than one hour during any period of the day or night.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 72.99

§ 72.14 FIRE LANE.

(A) The parking, stopping or standing of any personal property including motor vehicles, or any other means of obstructing fire lanes on private and public property shall be prohibited at all times pursuant to the inherent and statutory powers of the city to preserve the health, welfare and safety of its citizens. Any vehicle or other personal property found to be obstructing a fire lane shall, with the consent of the owner, lessee or other person in possession or control of the real estate where the fire lane has been established, be towed away or removed on the request of any law enforcement officer. The owner of personal property shall be responsible for all tow-in charges and resulting storage charges.

(B) The establishment and marking of emergency fire lanes shall be the responsibility and duty of the Street Commissioner and Fire Chief.

(C) The owner of any personal property or motor vehicle found in violation of this section shall be subject to the penalties as set forth in § 10.99.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 10.99

§ 72.15 OVER-TIME PARKING.

(A) Streets and parking lots owned by the city shall be under the supervision and jurisdiction of the Police Department and its duly elected and appointed officers and employees.

(B) Any motor vehicles parked or standing on a city parking facility regulated by parking meters in which the meter assigned to the space occupied by the vehicle does not indicate that sufficient money has been deposited in the meter, shall have a violation notice or uniform traffic ticket placed thereon indicating the offense of overtime parking.

(C) It shall be prima facie evidence that insufficient money has been deposited in the parking meter if the meter indicates that a violation has occurred.

(D) The parking of motor vehicles at metered facilities in which insufficient money has been deposited, or in which a violation is indicated by the meter, is hereby declared to be an offense punishable by fine or penalty as set out in § 10.99.

(E) A vehicle parked in a space in which insufficient monies have been deposited in the parking meter regulating the space or violation is indicated by the meter, the same may be removed or caused to be removed by an officer of the police department after the passage of a reasonable time and in no event less than four hours.

(F) The owner of personal property shall be responsible for all tow-in charges and resulting storage charges.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 10.99

§ 72.16 WIDTH OF VEHICLE LIMITED.

All vehicles over seven feet in width are prohibited from parking on any and all streets within the city.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 72.99

§ 72.17 PARKING DURING SNOW EMERGENCIES.

During or after any snow storm in which the Mayor or the Street Commissioner shall determine that an emergency exists for the removal of the accumulated snow, officers of the Police Department may prohibit parking upon any street to expediate the snow removal. Upon the order of the Mayor or Street Commissioner, parking upon any street would be restricted to parking upon the side of the street on which the addresses end in an even number upon all even numbered days and on the side of the street, the addresses end in an odd number upon odd numbered days. Any owner, driver or operator of any vehicle when called upon by a police officer at any time to remove the same shall do so immediately and if the owner, driver or operator cannot be found, the driver, owner or operator has one hour in which to remove the vehicle. Failure to remove the vehicle within the prescribed time limit will result in the vehicle being removed at the owner's expense.

(Ord. 505, passed 3-7-83) Penalty, see § 72.99

§ 72.18 ANGLE AND/OR DIAGONAL PARKING.

The City Council may from time to time establish angle or diagonal parking districts within the city limits by ordinance. Upon those streets or portions of streets which have been assigned or marked for angle and/or diagonal parking, no person shall park a vehicle in any manner other than at an angle to the curb or edge of the roadway as indicated by such signs and markings. No part of any vehicle or the road thereon, when parked within an angle and/or diagonal district shall extend into the roadway more than a distance of 16 feet when measured at right angles to the adjacent curb or edge of roadway.

(Ord. 2116, passed 6-6-11) Penalty, see § 72.99

§ 72.99 PENALTY.

(A) Every person convicted of violating the fire lane provisions set forth in this code shall be punished by a fine or penalty in the amount of \$25 for each offense if the fine of penalty is paid with seven days of the violation. Thereafter, a complaint shall be filled in court for the offense and the person shall be subject to a fine of not less than \$50 nor more than \$500 for each offense, plus court costs.

(B) Unless otherwise provided, every person charged with a parking violation shall pay a fine or penalty in the amount of \$25 per offense if the fine or penalty is paid within seven days of the violation. If the fine or penalty is paid within 30 days of the underlying violation, the fine or penalty shall be \$40. Thereafter, a complaint shall be filed with the court for the offense charged and the violator shall be subject to a fine of not less than \$50 nor more than \$500 for each offense, plus court costs.

(C) If a vehicle is parked for a period of time double that of the limitation allowed at a certain location, the party who parked the motor vehicle shall be subject to an additional fine in a like amount, and a police officer may have the vehicle removed from the street. The owner of the motor vehicle shall be responsible for all tow in charges and resulting storage charge.

(D) Any person being the operator, owner or any person in control of any vehicle who violates any parking provisions as set forth in this chapter, or any person who aids, abets or assists therein shall be subject to the penalty provisions as contained herein. All docket fees and fines and penalties shall be deposited in the Elwood General Fund.

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000)

CHAPTER 73: RECREATIONAL VEHICLES

Section

General Provisions

73.01 Snowmobiles

Golf Carts

73.15 Purpose

73.16 Definitions

73.17 Registration

73.18 Insurance

73.19 License requirement

73.20 Passengers

73.21 Rules and regulations

73.22 Exceptions

73.99 Penalty

GENERAL PROVISIONS

§ 73.01 SNOWMOBILES.

(A) *Authorized uses.* Snowmobiles shall be allowed to ride within the corporate limits of the city upon the public streets, except as prohibited in division (B). ('66 Code, § 4-3-4-1)

(B) *Operations.* All snowmobiles operated on the streets shall be required to stop at all intersecting streets and operate with their headlight on at all times. ('66 Code, § 4-3-4-3)

(C) *Operator requirements.* No person under 16 years of age shall operate a snowmobile without the immediate supervision of a person 18 years of age or older, except on land owned by the person's parents or legal guardian. ('66 Code, § 4-3-4-4)

(D) *Designated operating hours.* No snowmobile shall be operated within the corporate limits of the city between the hours of 11:00 p.m. and 6:00 a.m. except in times of duly designated emergencies. ('66 Code, § 4-3-4-5)

(E) *Parking.* Snowmobiles may be parked on designated routes and in the city metered lots and spaces. ('66 Code, § 4-3-4-6)
(Ord. 1483, passed - -79) Penalty, see § 10.99

GOLF CARTS

§ 73.15 PURPOSE.

The use of golf carts on city roads is hereby authorized subject to the regulations as set forth herein. (Ord. 2308, passed 8-6-18)

§ 73.16 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

GOLF CART. As defined in I.C. 9-13-2-69.7 means “a four wheeled motor vehicle originally and specifically designed and intended to transport one or more individuals and golf clubs for the purpose of playing the game of golf on a golf course.” For purposes of this subchapter, this term does not include vehicles commonly referred to as ATVs or off-road vehicles.
(Ord. 2308, passed 8-6-18)

§ 73.17 REGISTRATION.

(A) Any owner of a golf cart desiring to operate it on city streets must initially register it with and have it inspected by the Elwood Police Department before operation on city streets.

(B) The registration is valid for one year and can be renewed thereafter.

(C) The Elwood Police Department is charged with the responsibility for inspecting and registering golf carts, and the department shall also maintain the registration records and conduct annual renewals of the registration.

(D) The owner of the golf cart shall provide the requisite insurance coverage, as set forth herein, before the golf cart may be initially registered or annually renewed.

(E) There is a one-time registration/inspection fee of \$25, except for those citizens 65 years of age or older, who will be charged a registration/inspection fee of \$10.

(F) Each year, the owner of a golf cart shall renew its registration by submitting it to an inspection by local law enforcement officials and obtaining a new sticker upon passing such inspection and paying an annual fee of \$10. The owner shall be responsible for displaying the sticker, which shall be proof of inspection until the next renewal date. The officer shall not issue the initial registration or the annual renewal if, in the officer's opinion, the golf cart is partially inoperable or is in a dangerous condition. If the owner of the golf cart fails to renew its registration in any given year, the original registration of the golf cart shall lapse and should the owner wish to re-register the golf cart, the original registration fee and process would be required.

(G) Upon registration of the golf cart, the owner of said vehicle shall receive a registration sticker. If a registration sticker is not available at the time of registration, the owner will receive written proof of registration to be carried during the operation of said vehicle on the city streets until the registration sticker is issued.

(H) The registration of a golf cart may not be transferred to another person.
(Ord. 2308, passed 8-6-18)

§ 73.18 INSURANCE.

Any person who operates a golf cart on city roads shall maintain recreational vehicle liability insurance in the minimum amount of \$25,000 for bodily injury to or the death of one individual, \$50,000 for bodily injury to or the death of two or more individuals in any one accident, and \$25,000 for damage to or the destruction of property in one accident arising from the use and operation of the golf cart on city roads.

(Ord. 2308, passed 8-6-18)

§ 73.19 LICENSE REQUIREMENT.

Pursuant to I.C. 9-24-1-7(b), an operator of a golf cart must have a valid driver's license.
(Ord. 2308, passed 8-6-18) Penalty, see § 73.99

§ 73.20 PASSENGERS.

As required by I.C. 9-21-1-3.3(c), city does hereby set a limit on the number of passengers that may be permitted on a golf-cart. The number of bodies to a row is three per row of seats.

(Ord. 2308, passed 8-6-18)

§ 73.21 RULES AND REGULATIONS.

The operator of a golf cart shall adhere to and follow all traffic rules and regulations as set forth in the Indiana Code, and, in addition thereto, the following:

(A) The operator of the golf cart shall drive the golf cart as close to the curb/edge of the street/road when possible and must yield to other vehicles on the road;

(B) Golf carts shall not be operated on sidewalks;

(C) Golf carts shall be not be operated on walking paths in parks located in the city, except as provided herein;

(D) Golf carts must have lighted headlights and lighted taillights at all times, and a conspicuous flashing light;

(E) Golf carts must have rear view mirrors;

(F) Golf carts must have turn signals; and

(G) Golf carts must have adequate brakes.
(Ord. 2308, passed 8-6-18) Penalty, see § 73.99

§ 73.22 EXCEPTIONS.

(A) All police and fire vehicles and special events vehicles are exempt from the terms of this subchapter.

(B) Golf carts that are utilized by patrons or employees of Elwood Golf Links during the course of business are exempt from the terms of this subchapter.
(Ord. 2308, passed 8-6-18)

§ 73.99 PENALTY.

(A) Any person who violates this §§ 73.15 through 73.22 shall be fined in accordance with the following schedule:

(1) First offense = \$25.

(2) Second offense = \$50.

(3) Third offenses = \$100.

(4) Fourth and subsequent offenses = revocation of registration.

(B) Monies collected for a violation of this §§ 73.15 through 73.22 shall be deposited into the city's general fund pursuant to I.C. 9-21-1-3.3(b).
(Ord. 2308, passed 8-6-18)

CHAPTER 74: TRAFFIC SCHEDULES

Schedule

- I. Speed limits
- II. Restricted turns
- III. One-way streets and alleys
- IV. Automatic traffic control signals
- V. Reserved
- VI. Four-way stops
- VII. Three-way stops
- VIII. Stop streets
- IX. Unmarked intersections
- X. Snowmobiles prohibited on certain streets
- XI. Designated truck routes

SCHEDULE I. SPEED LIMITS.

No person shall drive or cause to be driven any vehicle at a speed greater than that indicated on any of the following streets or areas:

<i>Street</i>	<i>Location</i>	<i>Speed Limit</i>
19th Street	Between North "F" and Fairground streets	20
22nd Street	Between South "L" and "P" streets	20
Madison Road	Between Anderson and Glenview drives	20
SR 28	From the centerline of Madison County Road 1000W to a point approximately 800 feet east of the centerline of SR 37, a distance of approximately 15,048 feet	30
	Within 300 feet of school crosswalks	20

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<i>Street</i>	<i>Location</i>	<i>Speed Limit</i>
	All school zones and playground areas within the city limits which shall extend 300 feet beyond school ground and playground areas in all directions on streets passing along and adjacent to the school boundaries and playgrounds areas	20
	All streets passing along and adjacent to any city park area which shall extend 300 feet beyond the park in all directions on all streets passing along and adjacent to the park	20
	All areas other than those designated above	30

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000; Am. Ord. 2263, passed 10-3-16)

SCHEDULE II. RESTRICTED TURNS.

It is unlawful to make the turn listed on the following streets.

<i>Street</i>	<i>Restricted Location</i>	<i>Restriction</i>
16th Street	North "A" Street	No turn to the west
16th Street	North "B" Street	No turn to east
18th Street	North "A" Street	No left turn
18th Street	North "B" Street	No right turn
19th Street	North "A" Street	No turn to west
Anderson Street	Chamness Avenue	No turn
Anderson Street	North "B" Street	No turn
North "A" Street	18th Street	No right turn
North "B" Street	18th Street	No left turn
North "C" Street	18th Street	No turn south
North "D" Street	18th Street	No turn south

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000) Penalty, see § 10.99

SCHEDULE III. ONE-WAY STREETS AND ALLEYS.

Traffic shall move only in the direction indicated.

<i>Street</i>	<i>Location</i>	<i>Direction</i>
13th Street	Main and North "C" streets	North
18th Street	Main and North "D" streets	North
Alley north of No. F	North 20th and 21st streets	East
Alley going East and then North from North "H" to North "J"		East (from 16 th) North (to North "J")
Chamness Avenue	Entire length	Northwest
North "A" Street	Anderson and 19th streets	East
North "C" Street	13th and North "C" streets	West
South "D" Street	21st and 22nd streets	West
South "E" Street	21st and 22nd streets	East

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000; Am. Ord. 2001, passed 11-19-03; Am. Ord. 2272, passed 4-3-17)

SCHEDULE IV. AUTOMATIC TRAFFIC-CONTROL SIGNALS.

The following streets have automatic traffic-control signals.

<i>Streets</i>	<i>Intersection with</i>
Main Street	Anderson Street
Main Street	9th Street
Main Street	16th Street
Main Street	19th Street
North "J" Street	Anderson Street
South "A" Street	Anderson Street
South "B" Street	Anderson Street
South "J" Street	Anderson Street

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000)

SCHEDULE V. RESERVED.

SCHEDULE VI. FOUR-WAY STOPS.

The following intersections are designated four-way stop intersections and all vehicles shall stop before entering the intersections.

<i>Intersecting Streets</i>	<i>Direction</i>
3rd and North "A" streets	North
5th and North "A" streets	North
7th and South "A" streets	South
9th and South "A" streets	South
9th and South "B" streets	South
11th Street and South "A" Street	All
12th and North "H" streets	North
13th and North "D" streets	North
13th and North "F" streets	North
13th and South "H" streets	South
13th and South "G" streets	South
14th and South "K" streets	South
14th and South "L" streets	South
14th and North "H" streets	North
16th and North "D" streets	North
16th and North "J" streets	North
18th and North "K" streets	North
18th and South "A" streets	South
18th and South "H" streets	South
18th and South "J" streets	South
19th and North "D" streets	North
19th and North "F" streets	North
19th and North "J" streets	North

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<i>Intersecting Streets</i>	<i>Direction</i>
19th and South "L" streets	South
19th and South "M" streets	South
20th and North "D" streets	North
20th and South "I" streets	South
21st and North "A" streets	North
21st and North "D" streets	East and west
21st and North "E" streets	North and south
21st and South "K" streets	South
22nd and South "A" streets	South
22nd and South "E" streets	South
22nd and South "J" streets	South
22nd and South "K" streets	All
22nd Street/South "M" Street/Tomato Way	All
23rd and North "B" streets	North
23rd and North "C" streets	North
24th and North "A" streets	North
24th and North "D" streets	North
25th and North "D" streets	North and south
25th and South "H" streets	South
25th and South "N" streets	South
27th and South "D" streets	South
28th and South "A" streets	South
28th and South "J" streets	North/South
Jenkins/25th and South "J" streets	All
North 9th Street and North "D" Street	North/south

<i>Intersecting Streets</i>	<i>Direction</i>
North 14th Street and North "F" Street	All
North 16th Street and North "F" Street	North/South

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000; Am. Ord. 1557, passed 7-11-05; Am. Ord. 1557, passed 3-1-10; Am. Ord. 1557, passed 12-6-10; Am. Ord. 2183, passed 10-7-13; Am. Ord. 2210, passed 11-3-14; Am. Ord. 2233, passed 10-5-15; Am. Ord. 2239, passed 10-5-15; Am. Ord. 2240, passed 12-7-15; Am. Ord. 2242, passed 3-7-16)

SCHEDULE VII. THREE-WAY STOPS.

The following intersections are designated three-way stop intersections.

<i>Intersecting Streets</i>	<i>Direction</i>
9th and North "J" streets	North
11th and South "B" streets	South
12th and North "A" streets	North/South/East
12th and North "F" streets	North
16th and North "K" streets	North
16th and South "B" streets	South
19th and North "K" streets	North
22nd and South "M" streets	South
23rd and North "F" streets	North
25th and South "E" streets	South
29th and South "L" streets	North/South
Holiday Manor	South
Jenkins/25th Street and South "J" streets	All
Memorial Drive South and Washington Parkway	South
Madison Road and Glenview Street	South
Sweetbriar Road and Madison Road	East and West

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000; Am. Ord. 1557, passed 11-1-04; Am. Ord. 1557, passed 4-6-09; Am. Ord. 2145, passed 8-6-12; Am. Ord. 2243, passed 3-7-18; Am. Ord. 2250, passed 7-7-16)

SCHEDULE VIII. STOP STREETS.

The following intersections shall be stop intersections.

<i>Stop Streets</i>
1st and South "A" Streets
1st Street at its intersection with Main Street
1st Street at its intersection with County Line Road
2nd Street at its intersection with South "A" Street
2nd Street at its intersection with Main Street
3rd Street at its intersection with Main Street
3rd Street at its intersection with South "A" Street
4th and North "A" Streets
4th and North "D" Streets
4th Street at its intersection with Main Street
4th Street at its intersection with North "C" Street
4th Street at its intersection with South "A" Street
4th Street at its intersection with South "D" Street
5th Street at its intersection with Main Street
5th Street at its intersection with North "D" Street
5th Street at its intersection with South "A" Street
5th Street at its intersection with South "D" Street
6th and North "A" Streets
6th and North "C" Streets
6th Street at its intersection with Main Street
6th Street at its intersection with North "D" Street
6th Street at its intersection with South "A" Street
7th and North "C" Streets

<i>Stop Streets</i>
7th Street at its intersection with Main Street
7th Street at its intersection with North "D" Street
7th Street at its intersection with South "B" Street
8th and North "A" Streets
8th and South "C" Streets
8th Street at its intersection with Main Street
8th Street at its intersection with North "C" Street
8th Street at its intersection with North "D" Street
8th Street at its intersection with North "M" Street
8th Street at its intersection with South "A" Street
9th and South "G" Streets
10th and North "A" Streets
10th and North "C" Streets
10th and North "K" Streets
10th Street at its intersection with Main Street
10th Street at its intersection with North "D" Street
10th Street at its intersection with North "J" Street
10th Street at its intersection with South "A" Street
10th Street at its intersection with South "B" Street
11th and North "A" Streets
11th and North "C" Streets
11th and North "H" Streets
11th and North "K" Streets
11th Street at its intersection with Main Street
11th Street at its intersection with North "D" Street

<i>Stop Streets</i>
11th Street at its intersection with North "J" Street
12th and North "A" Streets
12th and North "D" Streets
12th and North "E" Streets
12th Street at its intersection with Main Street
12th Street at its intersection with North "D" Street
12th Street at its intersection with North "J" Street
12th Street at its intersection with South "A" Street
13th and North "C" Streets
13th and North "D" Streets
13th and North "E" Streets
13th and North "F" Streets
13th and North "H" Streets
13th and North "I" Streets
13th Street at its intersection with North "J" Street
13th Street at its intersection with North "K" Street
13th Street at its intersection with South "B" Street
13th Street at its intersection with South "J" Street
13th Street at its intersection with South "K" Street
13th Street at its intersection with South "L" Street
14th and South "I" Streets
14th and South "L" Streets
14th and South "M" Streets
14th Street at its intersection with North "C" Street
14th Street at its intersection with North "D" Street
14th Street at its intersection with South "H" Street
14th Street at its intersection with North "J" Street

<i>Stop Streets</i>
14th Street at its intersection with South "G" Street
14th Street at its intersection with South "J" Street
14th Street at its intersection with South "N" Street
16th and South "E" Streets
16th and South "F" Streets
16th and South "I" Streets
16th and South "K" Streets
16th Street at its intersection with "B" Street
16th Street at its intersection with "P" Street
16th Street at its intersection with South "A" Street
16th Street at its intersection with South "B" Street
16th Street at its intersection with South "G" Street
16th Street at its intersection with South "H" Street
16th Street at its intersection with South "J" Street
16th Street at its intersection with South "L" Street
16th Street at its intersection with South "M" Street
17th and South "E" Streets
17th Street at its intersection with South "F" Street
17th Street at its intersection with South "G" Street
17th Street at its intersection with South "H" Street
18th and North "C" Streets
18th and North "E" Streets
18th Street at its intersection with Main Street
18th Street at its intersection with "P" Street
18th Street at its intersection with North "A" Street
18th Street at its intersection with North "B" Street

<i>Stop Streets</i>
18th Street at its intersection with North "D" Street
18th Street at its intersection with North "E" Street
18th Street at its intersection with North "F" Street
18th Street at its intersection with North "J" Street
18th Street at its intersection with South "G" Street
18th Street at its intersection with South "K" Street
18th Street at its intersection with South "M" Street
19th and South "G" Streets
19th and South "I" Streets
19th and South "N" Streets
19th Street at its intersection with "P" Street
19th Street at its intersection with South "A" Street
19th Street at its intersection with South "B" Street
19th Street at its intersection with South "H" Street
19th Street at its intersection with South "J" Street
19th Street at its intersection with exit Middle School
19th Street at its intersection with exit High School
20th Street at its intersection with 25th Street
20th and North "A" Streets
20th and North "B" Streets
20th and North "E" Streets
20th and North "H" Streets
20th and South "K" Streets
20th and South "M" Streets
20th and South "N" Streets
20th Street at its intersection with "P" Street

<i>Stop Streets</i>
20th Street at its intersection with Main Street
20th Street at its intersection with North "F" Street
20th Street at its intersection with South "A" Street
20th Street at its intersection with South "H" Street
20th Street at its intersection with South "J" Street
20th Street at its intersection with South "L" Street
21st Street at its intersection with Main Street
21st Street at its intersection with North "B" Street
21st Street at its intersection with South "A" Street
21st and South "B" Streets
21st Street at its intersection with South "H" Street
21st and South "I" Streets
21st Street at its intersection with South "J" Street
21st Street at its intersection with South "L" Street
21st Street at its intersection with South "M" Street
21st Street at its intersection with South "N" Street
21st Street at its intersection with South "P" Street
22nd Street at its intersection with Main Street
22nd Street at its intersection with "P" Street
23rd Street at its intersection with Main Street
23rd and North "A" Streets
23rd and North "D" Streets
23rd Street at its intersection with North "E" Street
23rd Street at its intersection with South "A" Street
24th Street at its intersection with "P" Street
24th Street at its intersection with Main Street

<i>Stop Streets</i>
24th and North "E" Streets
24th Street at its intersection with North "F" Street
24th Street at its intersection with South "A" Street
24th and South "B" Streets
24th and South "C" Streets
24th and South "E" Streets
24th and South "F" Streets
24th and South "G" Streets
24th Street at its intersection with South "H" Street
24th and South "I" Streets
24th Street at its intersection with South "J" Street
24th and South "M" Streets
25th Street at its intersection with "P" Street
25th Street at its intersection with Main Street
25th and North "A" Streets
25th and North "B" Streets
25th Street at its intersection with South "A" Street
25th and South "M" Streets
26th Street at its intersection with "P" Street
27th Street at its intersection with Main Street
27th and North "A" Streets
27th and North "B" Streets
27th Street at its intersection with North "D" Street
27th Street at its intersection with South "A" Street
27th Street at its intersection with South "B" Street
27th Street at its intersection with South "J"

<i>Stop Streets</i>
28th Street at its intersection with "P" Street
28th Street at its intersection with Main Street
28th and North "C" Streets
29th Street (Sawmill) at its intersection with Main Street
29th Street at its intersection with South "L" Street
29th Street at its intersection with "P" Street
Boulevard Place at its intersection with DuLee Drive
Boulevard Place at its intersection with Madison Road
Brickyard Road at its intersection with St. Rd. 37
Chamness Avenue at its intersection with Anderson
County Line Road at its intersection with Main Street
East Swimming Pool at its intersection with 20th Street
Elk Lane at its intersection with Avenue West
Fairground Road at its intersection with Anderson
Forest Glen Apartments Exit at its intersection with 14th Street
High school exit and Parkview Lane
Holiday Manor (east)
Holiday Manor at its intersection with Lincoln Circle N.E. corner
Holiday Manor at its intersection with Lincoln Circle S.E. corner
Holiday Manor at intersection with Memorial Drive North, S.E. corner
Holiday Manor and Memorial Drive South, west side
Holiday Manor north on Independence Drive East
Holiday Manor north on Washington Parkway
Holiday Manor south on Independence Drive East
Holiday Manor west on Memorial Drive
Hughes Drive at its intersection with St. Rd. 37

<i>Stop Streets</i>
Jenkins Avenue at its intersection with South “J” Street
Madison Road at its intersection with Anderson
Memorial Drive North and Lincoln Circle
Memorial Drive North at its intersection with St. Rd. 37
Memorial Drive South at its intersection with St. Rd. 37
North 9th Street at its intersection with North “D” Street
North 16th Street at its intersection with North “F” Street
North “A” Street at its intersection with 16th Street
North “A” Street at its intersection with 19th Street
North “A” Street at its intersection with 28th Street
North “A” Street at its intersection with 29th Street (Sawmill)
North “A” Street at its intersection with 9th Street
North “A” Street at its intersection with 12th Street
North “A” Street at its intersection with County Line Road
North “B” Street at its intersection with 19th Street
North “B” Street at its intersection with 21st Street
North “B” Street at its intersection with 24th Street
North “B” Street at its intersection with 28th Street
North “B” Street at its intersection with Anderson
North “B” Street (east bound) at its intersection with North 19th Street
North “C” Street at its intersection with 16th Street
North “C” Street at its intersection with 19th Street
North “C” Street at its intersection with 20th Street
North “C” Street at its intersection with 25th Street
North “C” Street at its intersection with 27th Street
North “C” Street at its intersection with 29th Street (Sawmill)

<i>Stop Streets</i>
North "C" Street at its intersection with 3rd Street
North "C" Street at its intersection with 5th Street
North "C" Street at its intersection with 9th Street
North "C" Street at its intersection with Anderson
North "D" Street at its intersection with 29th Street
North "D" Street at its intersection with Anderson
North "E" Street at its intersection with 16th Street
North "E" Street at its intersection with 19th Street
North "E" Street at its intersection with 25th Street
North "E" Street at its intersection with Anderson
North "F" Street at its intersection with Anderson
North "G" Street at its intersection with Anderson
North "H" Street at its intersection with 16th Street
North "H" Street at its intersection with 19th Street
North "H" Street at its intersection with 9th Street
North "H" Street at its intersection with Anderson
North "K" Street at its intersection with 9th Street
North "K" Street at its intersection with Anderson
North "L" Street and its intersection with 8th Street
North "L" Street at its intersection with 9th Street
North "M" Street at its intersection with 9th Street
North 8th Street at its intersection with Fairground Road
North 9th Street at its intersection with Fairground Road
"P" Street at its intersection with Anderson
Parkview Drive at its intersection with 19th Street
South "A" Street and Street No. 1 for southeasterly traffic

<i>Stop Streets</i>
South "A" Street at its intersection with County Line Road
South "A" Street at its intersection with Main Street
South "B" Street at its intersection with 18th Street
South "B" Street at its intersection with 22nd Street
South "B" Street at its intersection with 25th Street
South "B" Street at its intersection with 28th Street
South "B" Street at its intersection with County Line Road
South "C" Street at its intersection with 21st Street
South "C" Street at its intersection with 22nd Street
South "C" Street at its intersection with 25th Street
South "C" Street at its intersection with 28th Street
South "C" Street at its intersection with Anderson
South "D" Street at its intersection with 31st Street
South "D" Street at its intersection with 22nd Street
South "D" Street at its intersection with 24th Street
South "D" Street at its intersection with 25th Street
South "D" Street at its intersection with 9th Street
South "D" Street at its intersection with 18th Street
South "D" Street at its intersection with Anderson
South "D" Street at its intersection with County Line Road
South "D" Street at its intersection with 28th Street
South "E" Street at its intersection with 18th Street
South "E" Street at its intersection with 21st Street
South "E" Street at its intersection with 28th Street
South "E" Street at its intersection with Anderson
South "F" Street at its intersection with 22nd Street

<i>Stop Streets</i>
South "F" Street at its intersection with 25th Street
South "F" Street at its intersection with 27th Street
South "F" Street at its intersection with 28th Street
South "F" Street at its intersection with Anderson
South "G" Street at its intersection with 22nd Street
South "G" Street at its intersection with 25th Street
South "G" Street at its intersection with Anderson
South "G" Street at its intersection with St. Rd. 37
South "H" Street at its intersection with 22nd Street
South "H" Street at its intersection with 28th Street
South "H" Street at its intersection with Anderson
South "I" Street at its intersection with 18th Street
South "I" Street at its intersection with 22nd Street
South "I" Street at its intersection with 25th Street
South "I" Street at its intersection with Anderson
South "K" Street at its intersection with 19th Street
South "K" Street at its intersection with 28th Street
South "K" Street at its intersection with Anderson
South "L" Street at its intersection with 14th Street
South "L" Street at its intersection with 18th Street
South "L" Street at its intersection with 22nd Street
South "L" Street at its intersection with 28th Street
South "L" Street at its intersection with Anderson
South "M" Street at its intersection with 28th Street
South "M" Street at its intersection with Anderson
South "N" Street at its intersection with 16th Street

<i>Stop Streets</i>
South "N" Street at its intersection with 18th Street
South "N" Street at its intersection with 22nd Street
South "N" Street at its intersection with 26th Street
South "N" Street at its intersection with Anderson
South "Q" Street at its intersection with Anderson
South "R" Street at its intersection with Anderson
South Sheridan at its intersection with Anderson
Sweetbrair Drive at its intersection with Madison Road
West Swimming Pools Exit at its intersection with 19th Street

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - - 2000; Am. Ord. 2001, passed 11-19-03; Am. Ord. 1557, passed 7-11-05; Am. Ord. 1557, passed 8-1-05; Am. Ord. 1557, passed 5-14-07; Am. Ord. 1557, passed 12-3-07; Am. Ord. 1557, passed 4-6-09; Am. Ord. 1557, passed 3-1-10; Am. Ord. 1557, passed 12-6-10; Am. Ord. 2220, passed 3-16-15; Am. Ord. 2239, passed 10-5-15; Am. Ord. 2240, passed 12-7-15; Am. Ord. 2242, passed 3-7-16; Am. Ord. 2268, passed 6-5-16; Am. Ord. 2250, passed 7-7-16; Am. Ord. 2279, passed 6-5-17; Am. Ord. 1557, passed 6-4-18)

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SCHEDULE IX. UNMARKED INTERSECTION.

The following streets are unmarked intersections.

<i>Streets</i>	<i>Direction</i>	<i>Intersects With</i>
4th Street	North	North "F" Street
9th Street	South	South "H" Street
29th Street	South	South "A" Street

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000)

SCHEDULE X. SNOWMOBILES PROHIBITED ON CERTAIN STREETS.

Snowmobiles shall not be operated upon the following streets.

<i>Prohibited Streets</i>
6th Street from Main Street to North "C" Street
7th Street from Main Street to North "C" Street
9th Street from South "G" Street to Fairground Road
18th Street from Main Street to South "J" Street
19th Street from Fairground Road to Main Street
28th Street from East Main Street to South "P" Street
North "C" Street from 6th Street to 7th Street
North "J" Street from 9th Street to 19th Street
South "P" Street from Anderson Street to Highway 37
All of 22nd Street
All of Anderson Street
All of Main Street
All of South "J" Street

('66 Code, § 4-3-4-2) (Ord. 1483, passed - -79) Penalty, see § 10.99

SCHEDULE XI. DESIGNATED TRUCK ROUTES.

(A) No truck or other commercial vehicle with a gross weight of 10,000 pounds or more shall be permitted on any city highway, street or alley except to make local deliveries, by owners of trucks or commercial vehicles who live within the city limits and are traveling to their residence and to designated truck routes for the purpose of ingress or egress and on the following designated routes.

(B) Any vehicle operating in violation of the following restrictions may be penalized by a fine of up to \$1,000 and the operation of a truck on any highway within the city limits that is not designated as part of the following truck routes shall be considered a separate offense on each street not so designated.

<i>Designated Truck Routes</i>
All portions of State Road 28 (Main Street)
All portions of State Road 13 (Anderson Street)
All portions of State Road 37
All portions of North "J" Street west of State Road 13 (Anderson Street)
All portions of Madison County Road 1300 North (Fairground Road)
North "B" Street between 28th Street and 29th Street
That portion of South "A" Street between St. Rd. 13 and St. Rd. 28
That portion of South "B" Street between the hospital exit and St. Rd. 13
That portion of North "C" Street from North 5th Street west to Factory Drive
That portion of South "J" Street between St. Rd. 13 and 28th Street
That portion of South "P" Street between St. Rd. 13 and St. Rd. 37
That portion of 1st Street between St. Rd. 28 and County Road 1300 North
That portion of 4th Street from St. Rd. 28 to North "C" Street
That portion of 9th Street from South "H" Street to 1300 North
That portion of 12th Street between St. Rd. 28 to North "D" Street
That portion of 19th Street between St. Rd. 28 and County Road 1300 North
That portion of 28th Street from South "P" Street to North "B" Street
That portion of 29th Street between St. Rd. 28 and County Road 1300 North

<i>Designated Truck Routes</i>
That portion of 18th Street from South "D" Street to St. Rd. 28
That portion of 22nd Street between South "P" Street and St. Rd. 28 and shall also include South "D" Street and South "E" Street from 22nd Street into the Red Giant facility
That portion of North "D" Street between North 9th Street and North 12th Street
That portion of 25th Street from South "J" Street to St. Rd. 28
That portion of South "G" Street between South 27th Street and South 28th Street
That portion of South "F" Street between 25th Street and 28th Street

(Ord. 1797, passed 6-6-94)

CHAPTER 75: PARKING SCHEDULES

Section

- I. Prohibited parking at all times
- II. Designated city parking lots
- III. Angle or diagonal parking districts
- IV. Reserved spaces for physically disabled

SCHEDULE I. PARKING PROHIBITED AT ALL TIMES.

No person shall park a vehicle at any time upon any of the following streets or parts of streets.

<i>Street</i>	<i>Block</i>	<i>Side(s)</i>
12th Street	North "F" to North "J" Streets	West
13th Street	Main to North "C" Streets	West
16th Street	South "B" and South "A" Streets	East
16th Street	South "A" to Main Streets	West
16th Street	Main to North "A" Streets	East
16th Street	North "A" to North "B" Streets	Both
18th Street	Main to North "A" Streets	Both
18th Street	North "A" to North "B" Streets	West
18th Street	North "B" to North "D" Streets	East
18th Street	R.R. to South "A" Street (except Sundays and holidays)	Both
18th Street	South "A" to Main Streets	East
18th Street	South "G" to South "H" Streets	West
18th Street	South "J" to South "J" Streets	East
19th Street	From Main to South "A" Streets	East
19th Street	From Main Street to Fairground Road	Both

Elwood - Traffic Code

<i>Street</i>	<i>Block</i>	<i>Side(s)</i>
21st Street	North "F" Street north to where North 21st Street intersects with City Park property	Both
27th Street	Main to North "A" Streets	East
28th Street	South "L" to South "K" Streets	West
28th Street	South "A" to South "B" Streets	East
28th Street	Main to North "A" Streets	Both
Anderson Street (St. Rd. 13)	From south city limits to South "C" Street	Both
Anderson Street (St. Rd. 13)	From South "C" Street; three 15-minute parking spaces	East
Anderson Street (St. Rd. 13)	Beginning at parking lot on southwest corner to South "B" Street	West
Anderson Street (St. Rd. 13)	From South "B" Street to alley	West
Anderson Street (St. Rd. 13)	From alley to South "A" Street	East
Anderson Street (St. Rd. 13)	From South "A" Street to alley	West
Anderson Street (St. Rd. 13)	From alley between South "A" and Main Streets	East
Anderson Street (St. Rd. 13)	From north city limits to Main Street (St. Rd. 28)	Both
Avenue East	In front of Lexington Arms	East
Holiday Manor		Both
Independence Drive		Both
Independence Drive South		Both
Lincoln Circle		Both
Main Street (St. Rd. 28)	From west city limits to 13th Street	Both

Parking Schedules

<i>Street</i>	<i>Block</i>	<i>Side(s)</i>
Main Street (St. Rd. 28)	From 16th Street to Chamness Avenue	South
Main Street (St. Rd. 28)	From Chamness Avenue to Anderson Street (St. Rd. 13)	Both
Main Street (St. Rd. 28)	From North 13th Street 420 feet east to light pole	North
Main Street (St. Rd. 28)	From first alley before Anderson to Main Streets	Both
Main Street (St. Rd. 28)	From east city limits to 16th Street	Both
Memorial Drive South		Both
Memorial Lincoln Drive East		Both
North 9th Street	South "C" to North "L" Streets	West
North 9th Street	Main to North "J" Streets	East
North "B" Street	First alley east of Anderson to 16th Street	South
North "B" Street	From N. 16th St. to N. 19th St.	South
North "D" Street	9th to 10th Streets	South
North "D" Street	13th to 14th Streets	North
North "F" Street	North Anderson to North 12th Streets	South
North "J" Street	16th to 19th Streets	Both
South "A" Street	8th Street to County Line	North
South "A" Street	19th to 29th Streets	South
South "B" Street	3rd Street to County Line	South
South "B" Street	18th and 22nd Streets	North
South "B" Street	Anderson to South 6th Streets	North
South "B" Street	Anderson to 16th Streets	Both (except as marked)

Elwood - Traffic Code

<i>Street</i>	<i>Block</i>	<i>Side(s)</i>
South "D" Street	Anderson to 13th Streets	South
South "D" Street	First alley East of Anderson to 18th Streets	South
South "E" Street	Anderson to 13th Streets	South
South "E" Street	Anderson to 18th Streets	South
South "F" Street	Anderson to 16th Streets	North
South "F" Street	Anderson to South 14th Streets	South
South "G" Street	Anderson Street East to cemetery	North
South "J" Street	Entire street	North
South "K" Street	Anderson to 22nd Streets	North
South "P" Street	Entire street	Both
Washington Parkway		Both

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000; Am. Ord. 2001, passed 11-19-03; Am. Ord. 1557, passed 10-4-04; Am. Ord. 2136, passed 4-2-12; Am. Ord. 2252, passed 8-1-16) Penalty, see § 10.99

SCHEDULE II. DESIGNATED CITY PARKING LOTS.

The following parking lots and/or spaces are designated for city employees only.

<i>Parking Lot</i>	<i>Side(s)</i>	<i>Designated Spaces</i>
First lot; corner of South 16th and Main streets	Southwest corner	Southwest corner
Second lot; South 16th between Main and South "A" streets	East side of street and south side of alley	Parking against "Building for the Public." All other spaces for city employees only.
Third lot; South 16th and Main streets	Southeast corner	City police cars only
Fourth lot; City Building	East	Employees and one handicap only

(Ord. 1557, passed 12-4-95; Am. Ord. 1924a, passed - -2000)

SCHEDULE III. ANGLE OR DIAGONAL PARKING DISTRICTS.

<i>Street</i>	<i>Block</i>	<i>Side</i>
South "A" Street	From 20' from the south/west corner of South "A" Street and State Road 13 (South Anderson Street) crosswalk, continuing west along the south side of South "A" Street to a point 10' from the first north/south alley west of State Road 13 (South Anderson Street)	South

(Ord. 2117, passed 6-6-11)

SCHEDULE IV. RESERVED SPACES FOR PHYSICALLY DISABLED.

<i>Street Name</i>	<i>Side(s)</i>	<i>Location</i>	<i>Times</i>	<i>Ord. No.</i>	<i>Date Passed</i>
South "A" Street		In front of 1530 S. A Street	All	2248	6-6-16

Penalty, see § 72.99

CHAPTER 76: ALTERNATIVE TRANSPORTATION

Section

- 76.01 Operator
- 76.02 Operation after daylight hours
- 76.03 Inspection
- 76.04 Seat belts and lights
- 76.05 Renewal of inspection
- 76.06 Registration
- 76.07 Definition
- 76.08 Parking

- 76.99 Penalty

§ 76.01 OPERATOR.

Any operator of alternative transportation must have a current and valid driver's license and comply with local and state ordinances and laws.
(Ord. 2061, passed 10-5-09)

§ 76.02 OPERATION AFTER DAYLIGHT HOURS.

If alternative transportation will be operated after daylight hours, then the vehicle shall be equipped with an amber flashing or amber strobe lights which must be visible front and rear. Any alternative transportation vehicle may be operated on city streets, but not state highways or city sidewalks.
(Ord. 2061, passed 12-3-07) Penalty, see § 76.99

§ 76.03 INSPECTION.

Any alternative transportation vehicle or device must be inspected on an annual basis. The inspection cost is \$25 per unit and the inspection shall be conducted by the Elwood Police Department. The purpose of the inspection will be to determine whether or not the unit is safe and in compliance with all related rules and regulations.
(Ord. 2061, passed 12-3-07) Penalty, see § 76.99

§ 76.04 SEAT BELTS AND LIGHTS.

Each unit shall have a seat belt for each passenger. Each unit shall have operating headlights and taillights. All rules and laws apply to alternative vehicles that apply to regular motor vehicles.
(Ord. 2061, passed 12-3-07) Penalty, see § 76.99

§ 76.05 RENEWAL OF INSPECTION.

The owner of the alternative vehicle must renew the inspection every 12 months. The Elwood Police Department shall maintain a record of inspections and reserves the right to remove any uninspected or unsafe alternate transportation unit.
(Ord. 2061, passed 12-3-07) Penalty, see § 76.99

§ 76.06 REGISTRATION.

Any alternative vehicle that operates on the city streets must be registered and inspected by the Elwood Police Department. Each unit shall be issued an inspection sticker, and the sticker is to be placed in plain view and on the driver's side, one inch below the driver's seat.
(Ord. 2061, passed 12-3-07)

§ 76.07 DEFINITION.

For purposes of this chapter, *ALTERNATE TRANSPORTATION* is described as any motorized vehicle not requiring to be plated, including, but not limited to, electric vehicles, golf carts, utility carts; excluding quad runners, dirt bikes and other ATV style vehicles.
(Ord. 2061, passed 12-3-07)

§ 76.08 PARKING.

Parking will be parallel to and on the right in the same direction as the traffic is designed to flow and in designated parking areas.
(Ord. 2061, passed 12-3-07)

§ 76.99 PENALTY.

(A) Any violator of this chapter shall be cited into a local court and subject to fines listed below:

- (1) No or nonoperating headlights or taillights: \$50;
- (2) No inspection sticker: \$50;
- (3) No seatbelts/not used: \$25 per violation;
- (4) Outdated inspection sticker: \$25; and
- (5) Operating on city sidewalks: \$25.

(B) Vehicles may be towed at an officer's discretion.

(Ord. 2061, passed 12-3-07)

TITLE IX: GENERAL REGULATIONS

Chapter

90. ABANDONED VEHICLES

91. ANIMALS

92. FAIR HOUSING

93. FIRE REGULATIONS

94. NUISANCES

95. PARKS

96. STREETS AND SIDEWALKS

CHAPTER 90: ABANDONED VEHICLES

Section

General Provisions

- 90.01 Short title
- 90.02 Definitions
- 90.03 Declaration of nuisance
- 90.04 Exemptions
- 90.05 Responsibility and liability of owner of abandoned vehicle or parts

Administrative Procedures

- 90.15 Discovery of possession by person other than vehicle owner
- 90.16 Notice to Bureau of vehicle discovered in possession of person other than owner; search; notice to buyer
- 90.17 Failure of owner or lienholder to appear; inability to determine ownership; declaring vehicle abandoned
- 90.18 Release to owner or lienholder of stored vehicle
- 90.19 Release; contents; notice by towing operators
- 90.20 [Reserved]
- 90.21 Tagging abandoned vehicle or parts
- 90.22 Officer's abandoned vehicle report; photographs
- 90.23 Vehicle or parts valued at less than five hundred dollars; disposal; retention by Bureau of report and photographs
- 90.24 Vehicle or parts valued at five hundred dollars or more; duties of tagging officer; tow and storage of vehicle or parts
- 90.25 Discovery of vehicle abandoned on rental property
- 90.26 Towing vehicle from rental property
- 90.27 Notice to Bureau given by operator towing vehicle from rental property
- 90.28 Complaint by person owning or controlling private property
- 90.29 Abandoned vehicle report; description and information; name and address of owner or lienholder
- 90.30 [Reserved]
- 90.31 Means of vehicle identification not available; disposal without notice
- 90.32 Public sale by Bureau; notice
- 90.33 Purchasers at public sales; bill of sale; fees; roadworthiness of vehicle
- 90.34 Payment of removal, storage and disposition costs; cost limits
- 90.35 Sale proceeds credited against removal, storage and disposition costs

Elwood - General Regulations

- 90.36 Sales by local units; deposit of proceeds; payment of public agency costs; appropriations
- 90.37 Fiscal body procedures established by ordinance; abandoned vehicle fund
- 90.38 Public agencies; personnel, property and towing contracts; fiscal body ordinances
- 90.39 Liability for loss or damage to vehicle or vehicle parts

GENERAL PROVISIONS**§ 90.01 SHORT TITLE.**

This chapter shall hereafter be known and cited as the “Abandoned Vehicle Ordinance.”

§ 90.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ABANDONED. When used in conjunction with the term vehicle, means:

- (1) Any vehicle located on public premises which does not have lawfully affixed thereto or displayed thereon a valid unexpired license plate and inspection sticker permitting its operation upon the highways of this state.
- (2) Any vehicle which is left on public premises continuously without being moved for a period of seven days.
- (3) Any vehicle located on public premises illegally or in such manner as to constitute a hazard or unreasonable obstruction to the movement of pedestrian or other vehicle traffic on a public right-of-way, street or highway.
- (4) Any vehicle that has remained on private premises without the consent of the owner or person in control of such premises, for more than 48 hours.
- (5) Any vehicle from which there has been removed the engine or transmission or differential or which is otherwise partially dismantled or inoperable and left on public premises.
- (6) Any vehicle from which there has been removed the engine or transmission or differential or which is otherwise partially dismantled or inoperable and left unattended for more than 180 days on private premises in a location visible from public premises and/or private premises at ground level.

(7) Any vehicle which has been removed by a towing service or a public agency upon request of an officer enforcing a provision of this code, statute or ordinance of the city other than this chapter, the violation of which may require the removal and impoundment of such motor vehicle and which motor vehicle once impounded is not claimed or redeemed by the owner or his agent within 30 days of its removal.

(8) A vehicle that is mechanically inoperable and is left on private property continuously in a location or locations visible from public property for more than 30 days.

AUTOMOBILE WRECKER. An automobile wrecking and parts business.

BUREAU. The Bureau of Motor Vehicles of the state.

COMMISSIONER. The Commissioner of the Bureau.

DISPOSAL AGENT. Any firm or individual engaged in business as a scrap metal processor or automobile wrecker.

OFFICER. A regular member of the Indiana State Police, a regular member of a city or town police department, a town marshal or town marshal deputy, a regular member of the county police force, or an individual of an agency designated by ordinance of the fiscal body.

OWNER. The last known record title holder to a vehicle according to the records of the Bureau under the provisions of I.C. 9-17.

PARTS. All component parts of a vehicle which are in a state of disassembly, or are assembled with other vehicle component parts, but which, in their state of assembly, do not constitute a complete vehicle.

PRIVATE PREMISES. All privately owned property which is not classified within the definition of public premises.

PUBLIC PREMISES. Any public right-of-way, street, highway, alley, park or other state, county or municipally owned property.

SCRAP METAL PROCESSOR. An establishment having facilities for processing iron, steel or nonferrous scrap and whose principal product is scrap iron and scrap steel or nonferrous scrap for sale.

TOWING SERVICE. A business organized for the purpose of moving or removing disabled motor vehicles, and, once removed, to store or impound such motor vehicles.

VEHICLE. Any motor vehicle, automobile, motorcycle, truck, trailer, semitrailer, truck tractor, bus, school bus, house car or motor bicycle.

(Ord. 1813, passed 8-8-95; Am. Ord. 1945, passed 6-5-2000)

§ 90.03 DECLARATION OF NUISANCE.

It shall be unlawful and is hereby declared a nuisance for any person to keep, park, store or permit to be kept, parked or stored an abandoned vehicle, as the same is hereinabove defined within the city limits.

§ 90.04 EXEMPTIONS.

The provisions of this chapter shall not apply to:

(A) Any vehicle in operable condition specifically adapted or constructed for operation on privately owned raceways;

(B) Any vehicle stored as the property of a member of the armed forces of the United States who is on active duty assignment;

(C) Any vehicle located on a vehicle sale lot, at a commercial vehicle servicing facility;

(D) A vehicle located upon property licensed or zoned as an automobile scrap yard.

(E) Any motor vehicle eligible for registration and licensing under I.C. 9-18-12-1 through 9-18-12-6 as an antique vehicle.

§ 90.05 RESPONSIBILITY AND LIABILITY OF OWNER OF ABANDONED VEHICLE OR PARTS.

The person who owns an abandoned vehicle or parts is:

(A) Responsible for the abandonment; and

(B) Liable for all of the costs incidental to the removal, storage, and disposal of the vehicle or the parts under this chapter.

ADMINISTRATIVE PROCEDURES

§ 90.15 DISCOVERY OF POSSESSION BY PERSON OTHER THAN VEHICLE OWNER.

When an officer discovers a vehicle in the possession of a person other than the owner of the vehicle and the person cannot establish the right to possession of the vehicle, the vehicle shall be taken to and stored in a suitable place determined by the officer.

(I.C. 9-22-1-5)

§ 90.16 NOTICE TO BUREAU OF VEHICLE DISCOVERED IN POSSESSION OF PERSON OTHER THAN OWNER; SEARCH; NOTICE TO BUYER.

The Bureau shall be notified within 72 hours of the location and description of a vehicle described in § 90.15.

§ 90.17 FAILURE OF OWNER OR LIENHOLDER TO APPEAR; INABILITY TO DETERMINE OWNERSHIP; DECLARING VEHICLE ABANDONED.

If the owner or lienholder under § 90.18 does not appear and pay all costs, or if the owner of a vehicle cannot be determined by a search conducted under § 90.29, the vehicle is considered abandoned and must be disposed of under this chapter.

(I.C. 9-22-1-7)

§ 90.18 RELEASE TO OWNER OR LIENHOLDER OF STORED VEHICLE.

If the properly identified person who owns or holds a lien on a vehicle appears at the site of storage before disposal of the vehicle or parts and pays all costs incurred against the vehicle or parts at that time, the vehicle or parts shall be released. A towing service shall notify the appropriate public agency of all releases under this section. The notification must include the name, signature, and address of the person that owns or holds a lien on the vehicle, a description of the vehicle or parts, costs, and the date of release.

(I.C. 9-22-1-8)

§ 90.19 RELEASE; CONTENTS; NOTICE BY TOWING OPERATORS.

The release must state the name, signature, and address of the person who owns or holds a lien on the vehicle, a description of the vehicle or parts, costs, and date of release. A towing service shall notify the appropriate public agency of all releases under § 90.18.

§ 90.20 [RESERVED].**§ 90.21 TAGGING ABANDONED VEHICLE OR PARTS.**

An officer who finds or is notified of a vehicle or parts believed to be abandoned shall attach in a prominent place a notice tag containing the following information:

(A) The date, time, officer's name, public agency, and address and telephone number to contact for information.

(B) That the vehicle or parts are considered abandoned.

(C) That the vehicle or parts will be removed after:

(1) Thirty-six hours, if the vehicle is located on or within the right-of-way of an interstate highway or any highway that is designated as part of the state highway system under I.C. 8-23-4; or

(2) Seventy-two hours, for any other vehicle.

(D) That the person who owns the vehicle will be held responsible for all costs incidental to the removal, storage, and disposal of the vehicle.

(E) That the person who owns the vehicle may avoid costs by removal of the vehicle or parts within 72 hours.

(1) Thirty-six hours, if the vehicle is located on or within the right-of-way of an interstate highway or any highway that is designated as part of the state highway system under I.C. 8-23-4; or

(2) Seventy-two hours, for any other vehicle.

(I.C. 9-22-1-11)

§ 90.22 OFFICER'S ABANDONED VEHICLE REPORT; PHOTOGRAPHS.

If a vehicle or a part tagged under § 90.21 is not removed within the applicable period, the officer shall prepare a written abandoned vehicle report of the vehicle or parts, including information on the condition and missing parts. Photographs may be taken to describe the condition of the vehicle or parts. (I.C. 9-22-1-12)

§ 90.23 VEHICLE OR PARTS VALUED AT LESS THAN FIVE HUNDRED DOLLARS; DISPOSAL; RETENTION BY BUREAU OF REPORT AND PHOTOGRAPHS.

If the vehicle is a junk vehicle and the market value of an abandoned vehicle or parts is less than \$1,000, the towing service shall immediately transfer the vehicle to a storage yard. A copy of the abandoned vehicle report and photographs, if applicable, relating to the abandoned vehicle shall be forwarded to the storage yard. A towing service or storage yard may dispose of an abandoned vehicle not less than 30 days after the date on which the towing service removed the abandoned vehicle. A city, county or town that operates a storage yard under I.C. 36-9-30-3, may dispose of an abandoned vehicle to an automobile scrap yard or an automotive salvage recycler upon removal of the abandoned vehicle. The public agency or storage yard disposing of the vehicle shall retain the original records and photographs for at least two years. If the vehicle is demolished, a copy of the abandoned vehicle report shall be forwarded to the Bureau by the automobile scrap yard after the vehicle has been demolished. (I.C. 9-22-1-13)

§ 90.24 VEHICLE OR PARTS VALUED AT FIVE HUNDRED DOLLARS OR MORE; DUTIES OF TAGGING OFFICER; TOW AND STORAGE OF VEHICLE OR PARTS.

If in the opinion of the officer the market value of the abandoned vehicle or parts is at least \$1,000, the officer, before placing a notice tag on the vehicle or parts, shall make a reasonable effort to ascertain the person who owns the vehicle or parts or who may be in control of the vehicle or parts. After 72 hours, the officer shall require the vehicle or parts to be towed to a storage yard or towing service. (I.C. 9-22-1-14)

§ 90.25 DISCOVERY OF VEHICLE ABANDONED ON RENTAL PROPERTY.

(A) A person who finds a vehicle believed to be abandoned on private property that the person owns or controls, including rental property, may:

- (1) Obtain the assistance of an officer under § 90.28 to have the vehicle removed; or
- (2) Personally arrange for the removal of the vehicle by complying with § 90.26(B).

(B) If the person wishes to personally arrange for the removal of the vehicle, the person shall attach in a prominent place a notice tag containing the following information:

- (1) The date, time, name, and address of the person who owns or controls the private property and a telephone number to contact for information.
- (2) That the vehicle is considered abandoned.

(3) That the vehicle will be removed after 72 hours.

(4) That the person who owns the vehicle will be held responsible for all costs incidental to the removal, storage, and disposal of the vehicle.

(5) That the person who owns the vehicle may avoid costs by removal of the vehicle or parts within 72 hours.

(I.C. 9-22-1-15)

§ 90.26 TOWING VEHICLE FROM RENTAL PROPERTY.

(A) If after 24 hours the person who owns a vehicle believed to be abandoned on private property has not removed the vehicle from the private property, the person who owns or controls the private property on which the vehicle is believed to be abandoned may have the vehicle towed from the private property.

(B) Notwithstanding division (A) above, in an emergency situation a vehicle believed to be abandoned on private property may be removed immediately. As used in this division, *EMERGENCY SITUATION* means that the presence of the vehicle believed to be abandoned interferes physically with the conduct of normal business operations of the person who owns or controls the private property or poses a threat to the safety or security of persons or property, or both.

(I.C. 9-22-1-16)

§ 90.27 NOTICE TO BUREAU GIVEN BY OPERATOR TOWING VEHICLE FROM RENTAL PROPERTY.

A towing service that tows a vehicle under § 90.26 shall give notice to the public agency that the abandoned vehicle is in the possession of the towing service.

(I.C. 9-22-1-17)

§ 90.28 COMPLAINT BY PERSON OWNING OR CONTROLLING PRIVATE PROPERTY.

Under complaint of a person who owns or controls private property that a vehicle has been left on the property for at least 48 hours without the consent of the person who owns or controls the property, an officer shall follow the procedures set forth in §§ 90.21 through 90.24.

(I.C. 9-22-1-18)

§ 90.29 ABANDONED VEHICLE REPORT; DESCRIPTION AND INFORMATION; NAME AND ADDRESS OF OWNER OR LIENHOLDER.

(A) Within 72 hours after removal of a vehicle to a storage yard or towing service under §§ 90.23, 90.24, 90.26 or 90.38 or I.C. 9-22-6, the public agency or towing service shall conduct a search of national data bases, including a data base of vehicle identification numbers, to attempt to obtain the last state of record of the vehicle in order to attempt to ascertain the name and address of the person who owns or holds a lien on the vehicle.

(B) A public agency or towing service that obtains the name and address of the owner of or lienholder on a vehicle shall, not later than 72 hours after obtaining the name and address, notify the person who owns or holds a lien on the vehicle of the following:

- (1) The name, address, and telephone number of the public agency or towing service;
- (2) That storage charges are being accrued and the vehicle is subject to sale if the vehicle is not claimed and the charges are not paid;
- (3) The earliest possible date and location of the public sale or auction;

The notice must be made by certified mail or a certificate of mailing or by means of an electronic service approved by the Bureau. Notwithstanding § 90.05, a public agency or towing service that fails to notify the owner of or lienholder on the vehicle as set forth in this section may not collect additional storage costs incurred after the date of receipt of the name and address obtained.
(I.C. 9-22-1-19)

§ 90.30 [RESERVED].

§ 90.31 MEANS OF VEHICLE IDENTIFICATION NOT AVAILABLE; DISPOSAL WITHOUT NOTICE.

If a vehicle or parts are in such a condition that vehicle identification numbers or other means of identification are not available to determine the person who owns or holds a lien on the vehicle, the vehicle may be disposed of without notice.
(I.C. 9-22-1-21)

§ 90.32 PUBLIC SALE BY BUREAU; NOTICE.

(A) This section applies to a unit or holder of a mechanics's lien under this chapter, including a towing service, city, town, or county.

(B) Except as provided in I.C. 9-22-1-23(c), if the person who owns or holds a lien upon a vehicle does not appear within 20 days after the mailing of a notice or the notification made by electronic service under § 90.29, the holder of a mechanic's lien may sell the vehicle or parts by either of the following methods.

(1) The holder of a mechanic's lien may sell the vehicle or parts to the highest bidder at a public sale or public auction. Notice of the sale or auction shall be given under I.C. 5-3-1, except that only one insertion in an appropriate publication one week before the public sale or auction is required.

(2) The city may sell the vehicle or part as unclaimed property under I.C. 36-1-11. The 20 day period for the property to remain unclaimed is sufficient for a sale under this division.
(I.C. 9-22-1-23(a) and (b))

§ 90.33 PURCHASERS AT PUBLIC SALES; BILL OF SALE; FEES; ROADWORTHINESS OF VEHICLE.

A person that purchases a vehicle under § 90.32 shall be furnished a bill of sale for each abandoned vehicle sold by the public agency upon paying the fee for a bill of sale imposed by the public agency. The fee may not exceed \$6 for each bill of sale. A person that purchases a vehicle under § 90.32 must:

(A) Present evidence from a law enforcement agency that the vehicle purchased is roadworthy, if applicable; and

(B) Comply with the applicable requirements under I.C. 9-17;

to obtain a certificate of title under for the vehicle.

(I.C. 9-22-1-24)

§ 90.34 PAYMENT OF REMOVAL, STORAGE AND DISPOSITION COSTS; COST LIMITS.

The costs for removal and storage of an abandoned vehicle or parts not claimed by the person who owns or holds a lien on a vehicle shall be paid from the abandoned vehicle account established under § 90.37. The charge payable by the person who owns or holds a lien on a vehicle for towing, storing, or removing an abandoned vehicle or parts may not exceed the limits established by ordinance adopted under § 90.37.

(I.C. 9-22-1-25)

§ 90.35 SALE PROCEEDS CREDITED AGAINST REMOVAL, STORAGE AND DISPOSITION COSTS.

The proceeds of sale of an abandoned vehicle or parts under § 90.32 shall be credited against the costs of the removal, storage, and disposal of the vehicle.
(I.C. 9-22-1-26)

§ 90.36 SALES BY LOCAL UNITS; DEPOSIT OF PROCEEDS; PAYMENT OF PUBLIC AGENCY COSTS; APPROPRIATIONS.

(A) This section applies to sales of abandoned vehicles or parts by a city, county or town.

(B) The proceeds from the sale of abandoned vehicles or parts, including:

(1) Charges for bills of sale; and

(2) Money received from persons who own or hold liens on vehicles for the cost of removal or storage of vehicles;

shall be deposited in the city's Abandoned Vehicle Fund by the fiscal officer of the city.

(C) The costs incurred by a public agency in administering this chapter shall be paid from the Abandoned Vehicle Fund.

(D) The fiscal body shall annually appropriate sufficient money to the fund to carry out this chapter. Money remaining in the fund at the end of a year remains in the fund and does not revert to the general fund.

(E) Notwithstanding division (D), the fiscal body of a consolidated city may transfer money from the fund.

(I.C. 9-22-1-27)

§ 90.37 FISCAL BODY PROCEDURES ESTABLISHED BY ORDINANCE; ABANDONED VEHICLE FUND.

(A) The fiscal body shall, by ordinance, establish procedures to carry out this chapter, including the following:

(1) The charges allowed for towing and storage of abandoned vehicles, which shall be filed with the Bureau.

(2) The means of disposition of vehicles.

(B) The fiscal body shall establish an abandoned vehicle fund for the purposes of this chapter.
(I.C. 9-22-1-30)

**§ 90.38 PUBLIC AGENCIES; PERSONNEL, PROPERTY AND TOWING CONTRACTS;
FISCAL BODY ORDINANCES.**

To facilitate the removal of abandoned vehicles or parts, a public agency may:

- (A) Employ personnel;
- (B) Acquire equipment, property, and facilities; and
- (C) Enter into towing contracts;

for the removal, storage, and disposition of abandoned vehicles and parts. The fiscal body may, by ordinance, establish procedures to carry out this section.
(I.C. 9-22-1-31)

§ 90.39 LIABILITY FOR LOSS OR DAMAGE TO VEHICLE OR VEHICLE PARTS.

The following are not liable for loss or damage to a vehicle or parts occurring during the removal, storage, or disposition of a vehicle or parts under this chapter:

- (A) A person who owns, leases, or occupies property from which an abandoned vehicle or parts are removed.
- (B) A public agency.
- (C) A towing service.
- (D) An automobile scrap yard.
- (E) A storage yard.

(I.C. 9-22-1-32)

CHAPTER 91: ANIMALS

Section

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GENERAL PROVISIONS

§ 91.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ANIMAL. Any live, non-human vertebrate creature, domestic or wild.

ANIMAL CONTROL OFFICER. The person employed by the city whose duties shall include, among others, the enforcement of the provisions included in this chapter.

ANIMAL SHELTER. The premises owned by the city for the purpose of caring for animals which are at large, lost or otherwise homeless.

AT LARGE. Any animal shall be deemed **AT LARGE** when it is not under restraint.

ATTACK. Any behavior by an animal that constitutes an immediate and serious physical threat to human beings or other animals, whether or not such behavior results in injury to such human beings or other animals. This behavior includes, but is not limited to, snapping at, lunging at, and/or attempting to bite human beings or animals.

HARBORING. The actions of any person which permit any animal habitually to remain, lodge or to be fed within his home, store, enclosure, yard or place of business or any premises on which a person resides or controls, shall be considered **HARBORING** an animal. An animal shall be presumed harbored if it is fed or sheltered for three consecutive days.

HUMANE SOCIETY. Any organization for the prevention of cruelty to animals incorporated under the laws of the state.

KENNEL. An establishment or residence wherein any person engages in boarding, breeding, buying, letting for hire, training for a fee or selling more than two dogs and/or cats.

OWNER. Any person, partnership or corporation owning, keeping or harboring one or more animals. An **OWNER** must provide shelter from weather for dogs and cats.

PERSON. Any individual, firm, association, joint stock company, syndicate, partnership or corporation.

PET. Any animal kept for pleasure rather than utility.

PUBLIC NUISANCE. Any animal(s) which:

- (1) Molests passers-by or passing vehicles;
- (2) Attacks other animals;
- (3) Is repeatedly at large;
- (4) Damages, leaves fecal matter on public or private property;

(5) Barks, whines or howls in an excessive or continuous fashion.

RESTRAINT. Any animal secured by a leash and lead within the real property limits of its owner. Any animals not physically confined to the owner's property shall be presumed not to be under **RESTRAINT**.

STRAY. Any animal which doesn't appear, upon reasonable inquiry, to have an owner.

TEMPERATURE CONTROLLED FACILITY. Must be brought into a temperature controlled facility when the temperature is at or below 20°F or at or above 90°F, or when a heat advisory, wind chill warning, or tornado warning has been issued by local, state, or national authority, except when the dog or cat is in visual range of a competent adult who is outside with the dog.

TIME LIMIT WITH ANIMAL SHELTER.

(1) Dogs or cats without tags will be kept at the shelter for three days.

(2) Dogs or cats with tags will be kept for five days. Every effort to contact the owner will be made. When an animal control officer is called to pick up dogs or cats on private property, the property owner must sign a release form to have the animal picked up.

VETERINARY HOSPITAL. Any establishment maintained and operated by a veterinarian for surgery, diagnosis and treatment of diseases and injuries of animals.

VICIOUS ANIMALS. Any animal that, by its behavior, constitutes an immediate and serious physical threat to human beings or animals.

WILD ANIMALS. Any animal not a domestic animal, with the exception of small, non-poisonous aquatic or amphibious animals and small cage birds.
(‘66 Code, § 4-10-1-1) (Ord. 1400, passed 11-13-95; Am. Ord. 1400, passed 4-6-09; Am. Ord. 2172, passed 5-6-13; Am. Ord. 2292, passed 3-5-18)

§ 91.02 ANIMAL CONTROL OFFICER; ENFORCEMENT.

(A) The office of Animal Control Officer is herewith created. The Animal Control Officer shall be appointed by the Mayor and shall carry out and supervise the enforcement of this chapter. The office shall be within the Elwood Police Department, and the salary shall be fixed by the Mayor and approved by the Common Council. (‘66 Code, § 4-10-1-2)

(B) The provisions of this chapter shall be enforced by the Animal Control Officer and appropriate law enforcement agencies. (‘66 Code, § 4-10-1-21)
(Ord. 1400, passed 11-13-95; Am. Ord. 2172, passed 5-6-13; Am. Ord. 2292, passed 3-5-18)

§ 91.03 LICENSING REQUIREMENTS.

(A) Any person owning, keeping, harboring or having custody of any dog or cat over six months of age within the municipality must obtain a license as herein provided. ('66 Code, § 4-10-1-3)

(B) Applications for a license shall be made to the Elwood Animal Shelter. The application, one per animal, shall include the name and address of the applicant(s), a description of the animal, the appropriate fee, a rabies certificate and a leptospirosis certificate issued from a veterinarian. Application for a license must be made when the animal reaches the age of six months. The license must be applied for within 20 days of acquisition. If not revoked, licenses for the keeping of all animals shall be for one year and must be purchased on or before May 30 of each year. License fees shall not be required for service animals. ('66 Code, § 4-10-1-4)

(Ord. 1400, passed 11-13-95; Am. Ord. 2172, passed 5-6-13; Am. Ord. 2292, passed 3-5-18) Penalty, see § 91.99

§ 91.04 LICENSING FEES.

(A) A license shall be issued only after payment of the applicable fees and the receipt of all application materials. Fees shall be as follows:

Type of Animal	License Fee Per Animal
Neutered or spayed (dog or cat)	\$10 each
Intact (dog or cat)	\$20 each

(B) A duplicate license may be obtained for a fee of \$1. If an animal is neutered or spayed after the license fee has been paid, a refund of 50% of the original license fee can be obtained from the Animal Control Officer upon presentation of a veterinarian's written statement. The owner of any animal deemed by a veterinarian to be unfit to undergo a spaying or neutering operation shall be, upon presentation of a written statement by the veterinarian, charged the fee for spayed or neutered animals. No person shall use any license for any animal other than the animal for which it was issued.

('66 Code, § 4-10-1-6) (Ord. 1400, passed 11-13-95; Am. Ord. 2172, passed 5-6-13; Am. Ord. 2292, passed 3-5-18)

§ 91.05 TAGS AND IDENTIFICATION COLLARS.

Upon acceptance of the license application and fee, the Elwood Animal Shelter shall issue durable tags or identification collars, stamped with an identifying number and the date of issuance. Animals must

wear tags at all times when off the premises of the owner. The licensing agent shall maintain a record of the identifying number of all tags issued.

('66 Code, § 4-10-1-5) (Ord. 1400, passed 11-13-95; Am. Ord. 2172, passed 5-6-13; Am. Ord. 2292, passed 3-5-18)

§ 91.06 REVOCATION OF LICENSE.

(A) The Animal Control Officer may revoke any license if the person holding a license refuses or fails to comply with any part of this chapter. The Animal Control Officer shall provide a ten-day notice to the owner prior to revoking the license, after which time the license shall be revoked and the animal(s) owned, kept or harbored by a person shall be rehomed by either the person himself or the Animal Control Officer, and no part of the license fee shall be refunded.

(B) If the person refuses to dispose of the animal(s), the Animal Control Officer shall do so and the cost of rehoming shall be borne by the person in offense. If the applicant has withheld or falsified any information on the application, the Animal Control Officer shall refuse to issue a license. No person who has been convicted of cruelty to animals shall be issued a license.

('66 Code, § 4-10-1-7) (Ord. 1400, passed 11-13-95; Am. Ord. 2172, passed 5-6-13; Am. Ord. 2292, passed 3-5-18)

§ 91.07 RABID ANIMALS; VACCINATION AND OTHER REQUIREMENTS.

(A) In the case of a dog, I.C. 35-46-3-1 shall be incorporated and enforced by appropriate state action. In the case of a cat, it shall be unlawful to own or harbor a cat over the age of six months without a valid rabies vaccination. ('66 Code, § 4-10-1-12)

(B) If an animal has bitten a person, the animal shall be impounded in the Elwood Animal Shelter at the expense of the owner for a period determined by the Animal Control Officer in order to determine whether or not the animal has rabies. If the animal dies during the period, it shall, at the owner's expense, be sent to the proper authorities to determine whether or not it was rabid. ('66 Code, § 4-10-1-13)

(C) Any animal which has been bitten by an animal known to have rabies shall be confined for a period of six months at the owner's expense or be destroyed. ('66 Code, § 4-10-1-14)

(D) It is unlawful for any owner knowing or suspecting an animal to have rabies or leptospirosis to allow an animal to leave his premises, except to be taken to the Elwood Animal Shelter. Every owner, upon ascertaining an animal is rabid, shall immediately notify the Animal Control Officer. ('66 Code, § 4-10-1-15)

(E) It is unlawful for a person to knowingly or intentionally harbor a dog or cat that is over the age of six months and is not immunized against rabies. (I.C. 35-46-3-1). (Ord. 1400, passed 11-13-95; Am. Ord. 1400, passed 4-6-09; Am. Ord. 2172, passed 5-6-13; Am. Ord. 2292, passed 3-5-18) Penalty, see § 91.99

§ 91.08 LIVESTOCK AND EXOTIC ANIMALS.

(A) Except as provided in subsection (C) below, no person shall have or keep any goat, sheep, pig, hog or other swine, horse, mule, pony, cattle, rabbit, chicken, duck, goose, turkey, guinea, or any other species of livestock, farm animal or fowl, including but not limited to any llama or ostrich, within the city limits. No person shall present or have in a public place or a place of public resort, any reptile or amphibian unless securely contained in a cage or similar device.

(B) Any poisonous or venomous animal, reptile or insect must be registered with the Elwood City Police Department. No fee is required. A penalty of \$25 per animal per incident will be assessed for non-compliance or failure to register the animal, reptile or insect. An owner or occupant of the premises where a poisonous or venomous animal, reptile or insect is kept shall post a sign on the front door which shall be provided upon registration and shall state "Warning: Poisonous or venomous animal, reptile or insect".

(C) Female chickens may be kept within the City of Elwood in residential districts only provided that all of the following conditions are met:

(1) No more than six female chickens may be kept per city parcel.

(2) A chicken shelter, the sufficiency of which must be approved by the City of Elwood Planning Department or Animal Control Officer, must be maintained by the owner of female chickens.

(3) Prospective owners of female chickens must pay an annual fee of \$5 per female chicken, not to exceed \$30, to defray the costs of the Animal Control Officer or Planning Department's inspection of the chicken shelter.

(4) Chicken shelters must be located no less than five feet from adjacent land owners real property and also be located at least 25 feet from homes owned by adjacent landowners.

(5) Female chickens must be kept enclosed from sunset until sunrise each evening.

(6) Male chickens, i.e. roosters, are strictly forbidden from the city pursuant to § 91.08(A). (Ord. 1400, passed 11-13-95; Am. Ord. 1400, passed 8-6-07; Am. Ord. 1400, passed 2-6-17; Am. Ord. 2292, passed 3-5-18) Penalty, see § 91.99

§ 91.09 RESTRAINING ANIMALS; IMPOUNDMENT PROCEDURES.

All animals shall be kept under restraint. No owner shall fail to exercise due care and control of his or her animals to prevent them from becoming a public nuisance. Every female animal in heat shall be confined in a building or secured enclosure in a manner that the female animals cannot come into contact with another animal or the same species except for planned breeding. Every vicious animal, as determined by the Animal Control Officer, shall be confined by the owner within a building or secured enclosure shall be securely muzzled or caged whenever of the premises of the owner. Unrestrained and nuisance animals shall be taken by the police or Animal Control Officer and impounded in the Elwood Animal Shelter, and there confined in a humane manner. If by a license tag or other means, the owner of an impounded animal can be identified, the Animal Control Officer shall immediately, upon impoundment, notify the owner by telephone or mail. An owner re-claiming an impounded dog or cat shall pay a \$10 per day boarding fee for each overnight stay impounded, plus a fine of \$25 for the first offense, \$50 for the second offense and \$100 for the third offense (plus a citation for public nuisance) and the fourth offense will result in surrender of the animal to the city and placement for adoption. Any animal not re-claimed by its owner within five working days shall become the property of the local government authority and shall be placed for adoption in a suitable home or humane euthanasia. An owner may surrender an animal to the city for a fee of \$25.

(‘66 Code, § 4-10-1-8) (Ord. 1400, passed 3-1-76; Am. Ord. passed 6-1-92; Am. Ord. passed 11-13-95; Am. Ord. passed 8-6-07; Am. Ord. passed 12-3-07; Am. Ord. 1400, passed 5-8-08; Am. Ord. 2172, passed 5-6-13; Am. Ord. 2292, passed 3-5-18) Penalty, see § 91.99

§ 91.10 POISONING ANIMALS.

No person shall expose any known poisonous substance, whether mixed with food or not, so that the same shall be liable to be eaten by an animal, provided that it shall not be unlawful for a person to expose on his own property, common rat or mouse poison mixed only with vegetable substances or unmixed.

(‘66 Code, § 4-10-1-11) (Ord. 1400, passed 11-13-95; Am. Ord. 2292, passed 3-5-18) Penalty, see § 91.99

§ 91.11 GIVING ANIMALS AS PRIZES.

No person shall give away any live animal, fish, reptile or bird as a prize for, as an inducement to enter any contest, game or other competition, as an inducement to enter a place of amusement or offer the vertebrate as an incentive to enter into any business agreement whereby the offer was for the purpose of attracting trade.

(‘66 Code, § 4-10-1-9) (Ord. 1400, passed 11-13-95; Am. Ord. 2292, passed 3-5-18) Penalty, see § 91.99

§ 91.12 MOTOR VEHICLES ACCIDENTS INVOLVING ANIMALS.

Any person who, as the operator of a motor vehicle, strikes an animal shall stop at once and immediately report the injury or death to the animal's owner. In the event the owner cannot be ascertained or located, the operator shall at once report the accident to the appropriate law enforcement agency or to the Animal Control Officer.

('66 Code, § 4-10-1-10) (Ord. 1400, passed 11-13-95; Am. Ord. 2172, passed 5-6-13; Am. Ord. 2292, passed 3-5-18)

§ 91.13 ADOPTION OF ANIMALS.

The Animal Control Officer, with the approval of the Common Council, may promulgate policies and regulations for the adoption of animals from the Elwood Animal Shelter.

('66 Code, § 4-10-1-16) (Ord. 1400, passed 11-13-95; Am. Ord. 2172, passed 5-6-13; Am. Ord. 2292, passed 3-5-18)

§ 91.14 DISPOSITION OF FUNDS.

All fees or monies collected shall be paid to the Clerk-Treasurer or Animal Control Officer. Money so paid shall be transmitted to the Clerk-Treasurer, shall be placed in a special fund and shall be used in carrying out the provisions of this chapter.

('66 Code, § 4-10-1-20) (Ord. 1400, passed 11-13-95; Am. Ord. 2172, passed 5-6-13; Am. Ord. 2292, passed 3-5-18)

§ 91.15 OWNER RESPONSIBILITY FOR ANIMAL ATTACKS.

(A) It shall be unlawful for an owner or keeper of an animal to allow that animal to attack or injure a person who did not provoke the animal prior to the attack.

(B) Owners of a rental property may be responsible for any animal harbored on their property. In the event a problem arises with a tenant in the enforcement of this section, the owner of the rental property shall assist the city in the enforcement. If the property owner fails to assist with the enforcement of this section, (he property owner may become responsible and cited into court in accordance with the provisions of this section.

(C) It shall be a defense to prosecution under this section if:

(1) The attack occurred in an enclosure in which the animal was confined without means of escape, there was posted at the main entrance of the enclosure a notice to beware of the animal and the person attacked entered the enclosure without invitation; or

(2) The person was attacked during the commission or attempted commission of a criminal act on the property of the owner or keeper of the animal.

(D) The liability imposed by this section shall not reduce, substitute for or in any manner be deemed to be in derogation of the rights accorded victims of dog bite injury or property damages as provided for in I.C. 15-5-12 *et seq.*, any successor statutes or by common law.

(Ord. 1400 passed 8-6-07; Am. Ord. 1400, passed 12-3-07; Am. Ord. 1400, passed 4-6-09; Am. Ord. 2292, passed 3-5-18) Penalty, see § 91.99

§ 91.16 FEE FOR SURRENDER OF ANIMAL.

An owner surrendering an animal to the city will be assessed a fee of \$25 per animal surrendered. (Ord. 1400, passed 4-6-09; Am. Ord. 2292, passed 3-5-18)

§ 91.17 ABANDONED OR NEGLECTED ANIMAL.

It is unlawful for a person who owns a dog or cat to recklessly, knowingly, or intentionally abandon or neglect such animal. (I.C. 35-46-3-7).

(Ord. 1400, passed 4-6-09; Am. Ord. 2292, passed 3-5-18) Penalty, see § 91.99

§ 91.18 TEMPERATURE CONTROLLED FACILITY.

Must be brought into a temperature controlled facility when the temperature is at or below 20°F or at or above 90°F, or when a heat advisory, wind chill warning, or tornado warning has been issued by local, state, or national authority, except when the dog or cat is in visual range of a competent adult who is outside with the dog.

(Ord. 2292, passed 3-5-18)

KENNELS

§ 91.25 PERMITS REQUIRED; PROCEDURE.

(A) No person shall operate a kennel without first obtaining a permit in compliance with this chapter. Each facility regulated by this chapter shall be considered a separate enterprise and shall require an individual permit. ('66 Code, § 4-10-1-17)

(B) The applicant must apply to the Zoning Board of Appeals for a special exception to operate kennels on their property. The applicants must meet all of the requirements for a kennel. Then the applicant must submit a full set of prints showing kennel sites, construction of kennels and location of kennels on site plans for approval of the Zoning Board.

(C) After the kennel is approved by the Zoning Board then the applicant must submit the approved form to the Clerk-Treasurer for the proper kennel license. The licenses are good for the calendar year in which they are written for the person or persons receiving approval and must be renewed by January 31 of the following year. The special exception is good for the person or persons to whom it is written only and change of ownership requires a new kennel license. ('66 Code, § 4-10-1-18) (Ord. 1400, passed 11-13-95; Am. Ord. 2292, passed 3-5-18) Penalty, see § 91.99

§ 91.26 PERMIT FEES.

(A) Kennel permit fees are as follows:

Number of accommodated animals	Fees per permit
For each kennel authorized to accommodate 15 animals	\$100
For each kennel authorized to accommodate 15 to 50 animals	\$150
For each kennel authorized to accommodate more than 50 animals	\$200

(B) No fee shall be required of any veterinary hospital, animal shelter or government-operated zoological park or laboratory. ('66 Code, § 4-10-1-19) (Ord. 1400, passed 11-13-95; Am. Ord. 2292, passed 3-5-18)

§ 91.27 KENNEL REQUIREMENTS.

(A) All kennels will be kept in a sanitary condition. Dog runs will be hard-surfaced for easy cleaning. All animals will be separated except for mating or tending young.

(B) Kennels with less than 15 animals over the age of four months shall be separated from nearest residences or business by not less than 200 feet.

(C) Kennel with over 15 but less than 50 animals shall be separated from nearest residence or business by not less than 300 feet.

(D) Kennel with over 50 animals shall be separated from nearest residence or business by not less than 400 feet.

('66 Code, § 4-10-1-17) (Ord. 1400, passed 11-13-95; Am. Ord. 2292, passed 3-5-18) Penalty, see § 91.99

§ 91.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99.

(B) A person who violates any provision of § 91.15 shall be subject to a fine for any such violation of not less than \$500. If the violation results in the animal causing serious bodily injury to any person, the court, upon request, shall order the animal forfeited and/or destroyed.

(C) A person who violates any provision of § 91.18 shall be subject to a fine for any such violation of not less than \$25 for the first offense and no less than \$200 for the second or subsequent violations, (Ord. 1400, passed 11-13-95; Am. Ord. 1400 passed 8-6-07; Am. Ord. 1400, passed 12-3-07; Am. Ord. 2292, passed 3-5-18)

CHAPTER 92: FAIR HOUSING

Section

- 92.01 Policy
- 92.02 Definitions
- 92.03 Unlawful practice
- 92.04 Discrimination in sales or rentals
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§ 92.01 POLICY.

It shall be the policy of the city to provide, within constitutional limitation, for fair housing throughout its corporate limits as provided for under the federal *Civil Rights Act of 1968*, as amended, the federal *Housing and Community Development Act of 1974*, as amended, and I.C. 22-9.5-1 *et seq.* (Ord. 1777, passed 6-7-93)

§ 92.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AGGRIEVED PERSON. Includes any person who:

(1) Claims to have been injured by a discriminatory housing practice; or

(2) Believes that the person will be injured by a discriminatory housing practice that is about to occur.

(I.C. 22-9.5-2-2)

COMMISSION. Indiana Civil Rights Commission created pursuant to I.C. 22-9.1-4 *et seq.* (I.C. 22-9.5-2-3)

COMPLAINT. A written grievance filed with the city either by a complainant or another party, which meets all the requirements of § 92.11 (B) and (C).

COMPLAINANT. A person, including the Commission, who files a complaint under I.C. 22-9.5-6. (I.C. 22-9.5-2-4)

COVERED MULTI-FAMILY DWELLINGS.

- (1) Buildings consisting of four or more units if the buildings have one or more elevators; and
- (2) Ground-floor units in other buildings consisting of four or more units.

DISABILITY.

- (1) With respect to a person:

(a) A physical or mental impairment which substantially limits one or more of the person's major life activities;

(b) A record of having such an impairment;

(c) An impairment described or defined pursuant to the federal *Americans with Disabilities Act of 1990*;

(d) Any other impairment defined under I.C. 29-9.5-2-10.

(2) **DISABILITY** shall not include current illegal use of or addiction to a controlled substance, as defined in Section 802 of USC Title 21 (I.C. 22-9.5-2-10 (b)), or psychoactive substance use disorders resulting from current illegal use of drugs;

- (3) An individual shall not be considered disabled solely on the basis of the following:

(a) Homosexuality;

(b) Bisexuality;

(c) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments or other sexual behavior disorders; or (I.C. 22-9.5-2-10 (c))

(d) Compulsive gambling, kleptomania or pyromania.

DISCRIMINATORY HOUSING PRACTICE. An act that is unlawful under §§ 92.04, 92.05, 92.06, 92.07 and 92.08 of this chapter or I.C. 22-9.5-5.

DWELLING. Any:

(1) Building, structure or part of a building or structure that is occupied as, or designed or intended for occupancy as, a residence by one or more families; or

(2) Vacant land which is offered for sale or lease for the construction or location of a building, structure or part of a building or structure that is occupied as, or designed or intended for occupancy as a residence by one or more families.

(I.C. 22-9.5-2-8)

FAMILY. Includes a single (I.C. 22-9.5-2-9) with the status of the family being further defined below. Also pursuant to 24 C.F.R. Part 5, the definition of **FAMILY** is revised to include families regardless of actual or perceived sexual orientation, gender identity or marital status of its members.

FAMILIAL STATUS. One or more individuals who have not attained the age of 18 years being domiciled with:

(1) A parent or another person having legal custody of an individual or the written permission of the parent or other person; or

(2) The protection afforded against discrimination on this basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

OWNER. The person holding legal or equitable title to property or his or her legal representative.

OWNER OCCUPIED. Any individual who:

(1) Is a title holder of record or contract purchaser of the real property in question; and

(2) Continued to occupy and reside in the property as his principal dwelling place at the time the alleged discriminatory act occurs.

PERSON. Includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, non-incorporated organizations, trustees, trustees in cases under USC Title 11, receivers and fiduciaries. (I.C. 22-9.5-2-11)

TO RENT. Includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy the premises owned by the occupant. (I.C. 22-9.5-2-13)

(Ord. 1777, passed 6-7-93; Am. Ord. 2147, passed 8-6-12)

Editor's Note:

I.C. 22-9.5-2-10(b) and I.C. 22-9.5-10(c) are repealed by 2007 Public Law 99, Section 224.

§ 92.03 UNLAWFUL PRACTICE.

(A) Subject to the provisions of division (B) below, § 92.10 of this chapter and I.C. 22-9.5-3, the prohibitions against discrimination in the sale or rental of housing set forth in I.C. 22-9.5-5-1 and in §§ 92.04 and 92.05 of this chapter shall apply to all dwellings except as exempted by division (B) below and I.C. 22-9.5-3.

(B) Other than the provisions of division (C) below, nothing in §§ 92.04 and 92.05 shall apply to:

(1) Any single-family house sold or rented by an owner where the private individual owner does not own more than three single-family houses at any one time, provided that in the sale of a single-family house by a private individual owner not residing in the house at the time of sale or who was not the most recent resident of the house prior to the sale, the exemption shall apply only to one sale within any 24-month period. The private individual owner may not own any interest in, nor have owned or reserved on his behalf, title to or any right to all or a portion of the proceeds from the sale or rental of three or more single-family houses at any one time.

(2) The sale or rental of any single-family house shall be excepted from application of this section only if the house is sold or rented.

(a) Without the use in any manner of the sales or rental facilities or services of any real estate broker, agent or salesman, or any person in the business of selling or renting dwellings, or of any employee or agent of any broker, agent, salesman or person; and

(b) Without the publication, posting or mailing, after notice of advertisement or written notice in violation of § 92.04 (C) of this chapter. Nothing in this provision shall prohibit the use of attorneys, escrow agents, abstracters, title companies and other professional assistance as necessary to perfect or transfer this title.

(3) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of the living quarters as his residence.

(C) For the purposes of division (B), a person shall be deemed to be in the business of selling or renting dwellings if:

(1) He has, within the preceding 12 months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;

(2) He has, within the preceding 12 months, participated as agent, other than in the sale of his own personal residence, in providing sales or rental facilities or services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or

(3) He is the owner of any dwelling unit designed or intended for occupancy by, or occupied by, five or more families.
(Ord. 1777, passed 6-7-93)

§ 92.04 DISCRIMINATION IN SALES OR RENTALS.

As made applicable by § 92.03 and except as exempted by §§ 92.03 (B) and 92.10, it shall be unlawful:

(A) To refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex familial status or national origin;

(B) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith because of race, color, religion, sex, familial status or national origin;

(C) To make, print or publish, or cause to be made, printed or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, sex, disability, familial status or national origin or an intention to make any preference, limitation or discrimination;

(D) To represent to any person because of race, color, religion, sex, disability, familial status or national origin that any dwelling is not available for inspection, sale or rental when the dwelling is in fact so available;

(E) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or perspective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, disability, familial status or national origin;

(F) (1) To discriminate in the sale or rental or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of:

(a) That buyer or renter;

(b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(c) Any person with that person.

(2) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with the dwelling, because of a disability of:

(a) That buyer or renter;

(b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(c) Any person with that person.

(Ord. 1777, passed 6-7-93)

§ 92.05 DISCRIMINATION; QUALIFICATIONS AND STANDARDS.

(A) For purposes of this section, discrimination includes:

(1) A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by a person if the modifications may be necessary to afford the person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(2) A refusal to make reasonable accommodations in rules, policies, practices or services, when accommodations may be necessary to afford the person equal opportunity to use and enjoy a dwelling; or

(3) In connection with the design and construction of covered multi-family dwellings for first occupancy after the date that is 30 months after September 13, 1988, a failure to design and construct those dwellings in such a manner that:

(a) The public and common use portions of the dwellings are readily accessible to and usable by disabled persons;

(b) All doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and

(c) All premises within the dwellings contain the following features of adaptive design:

1. An accessible route into and through the dwelling;

2. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;

3. Reinforcements in bathroom walls to allow later installation of grab bars; and

4. Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(d) Compliance with the appropriate requirements of the *Americans With Disabilities Act of 1990* and of the American National Standard for buildings and facilities providing accessibility and usability for physically disabled people (commonly cited as “ANSI A117.1”) suffices to satisfy the requirements of division (A)(3)(c).

(B) Nothing in this section requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.
(Ord. 1777, passed 6-7-93)

§ 92.06 DISCRIMINATION IN REAL ESTATE TRANSACTIONS.

(A) It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of a transaction, because of race, color, religion, sex, disability, familial status or national origin.

(B) As used in this section, the phrase “residential real estate-related transaction” means any of the following:

- (1) The making or purchasing of loans or providing other financial assistance:
 - (a) For purchasing, constructing, improving, repairing or maintaining a dwelling; or
 - (b) Secured by residential real estate.
- (2) The selling, brokering or appraising of residential real property.

(C) Nothing in this chapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, disability or familial status.
(Ord. 1777, passed 6-7-93)

§ 92.07 DISCRIMINATION IN BROKERAGE SERVICES.

It shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers’ organization or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of access, membership, or participation, on account of race, color, religion, sex, disability, familial status or national origin.
(Ord. 1777, passed 6-7-93)

§ 92.08 INTERFERENCE, COERCION AND INTIMIDATION.

It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, on account of his having exercised or enjoyed or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by §§ 92.03, 92.04, 92.05, 92.06 and 92.07.

(Ord. 1777, passed 6-7-93)

§ 92.09 PREVENTION OF INTIMIDATION; FINE.

Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with or attempts to injure, intimidate or interfere with:

(A) Any person because of his race, color, religion, sex, disability, familial status or national origin and because he is or has been selling, purchasing, renting, financing, occupying, contracting or negotiating for the sale, purchase, renting, financing or occupation of any dwelling or applying for or participating in any service, organization or facility relating to the business of selling or renting dwellings; or

(B) Any person because he is or has been or in order to intimidate the person or any other person or class of person from:

(1) Participating, without discrimination on account of race, color, religion, sex, disability, familial status or national origin, in any of the activities, services, organizations or facilities described in division (A); or

(2) Affording another person or class of persons opportunity or protection so to participate.

(C) Any citizen, because he is, has been or in order to discourage the citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, disability, familial status, or national origin, in any of the activities, services, organizations or facilities described in division (A), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to participate shall be fined not more than \$1,000 or if bodily injury results shall be fined not more than \$2,500.

(Ord. 1777, passed 6-7-93)

§ 92.10 EXEMPTIONS.

(A) Exemptions defined or set forth under I.C. 22-9.5-3 *et seq.*, shall be exempt from the provisions of this chapter to include those activities or organizations set forth under divisions (B) and (C) of this section.

(B) Nothing in this chapter shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to membership in the religion restricted on account of race, color or national origin. Nor shall anything in this chapter prohibit a private club not in fact open to the public, which has an incident to its primary purpose or purposes from limiting the rental or occupancy of the lodgings to its members or from giving preference to its members.

(C) (1) Nothing in this chapter regarding familial status shall apply with respect to housing for older persons.

(2) As used in this section, the phrase “housing for older persons” means housing:

(a) Provided under any state or federal program that the Secretary of the Federal Department of Housing and Urban Development or the state Civil Rights Commission determines is specifically designed and operated to assist elderly persons (as defined in the state or federal program);

(b) Intended for, and solely occupied by, persons 62 years of age or older; or

(c) Intended and operated for occupancy by at least one person 55 years of age or older per unit.

(3) Housing that includes units that are unoccupied or that are occupied by persons who do not meet the age requirement of divisions (B) or (C) does not fail to meet the requirements for housing older persons if:

(a) The unoccupied units are reserved for persons who meet the age requirements of divisions (B) or (C); or

(b) The occupants who do not meet the age requirements of divisions (b) and (c) above have resided in the housing since September 12, 1988, or an earlier date and the persons who become occupants after September 13, 1988, meet the age requirements of divisions (b) and (c) above.

(4) The city shall adopt rules under I.C. 4-22-2 to establish criteria for matching determinations under division (2) above. These rules must include at least the following provisions:

(a) Except as provided in division (b) below, the housing must provide significant facilities and services specifically designed to meet the physical or social needs of older persons.

(b) If the provision of the facilities and services described in division (a) above is not practicable, the housing must be necessary to provide important housing opportunities for older persons.

(c) At least 80% of the units must be occupied by at least one person who is at least 55 years of age.

(d) The owner or manager of the housing must publish and adhere to provide housing for persons who are at least 55 years of age.
(Ord. 1777, passed 6-7-93)

§ 92.11 ADMINISTRATIVE ENFORCEMENT.

(A) The authority and responsibility for properly administering this chapter and referral of complaints hereunder to the Indiana Civil Rights Commission as set forth in division (C) hereof shall be vested in the chief executive officer of the city.

(B) A complaint concerning an alleged discriminatory housing practice must be in writing, under oath and addressed to the Mayor.

(C) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, whichever is later, file a complaint with the Commission (as delineated in division (D) below alleging the discriminatory housing practice.

(D) Notwithstanding the provisions of I.C. 22-9.5-4-8, the city, because of a lack of financial and other resources necessary to fully administer enforcement proceedings and possible civil actions under this chapter, herein elects to refer all formal complaints of violation of the sections of this chapter by complainants to the Indiana Civil Rights Commission for administrative enforcement actions pursuant to I.C. 22-9.5-6. The chief elected officer of the city shall refer all the complaints to the Commission, as provided for under division (A) of this section, for purposes of investigation, resolution and appropriate relief as provided for under I.C. 22-9.5-6.

(E) Not later than one year after an alleged discriminatory housing practice has occurred or terminated, whichever is later, the Commission may file its own complaint.

(F) A complaint under this section may be amended at any time.

(G) When a complaint is filed under this section, the city shall do the following:

(1) Give the aggrieved person notice that the complaint has been received;

(2) Advise the aggrieved person of the time limit and choice of forums under this section;

(3) The chief executive officer of the city or his or her designee shall provide information on remedies available to any aggrieved person or complainant requesting information;

(4) Not later than 20 days after filing the complaint or identification of an additional respondent, the following shall be served:

(a) A notice identifying the alleged discriminatory practice and advising the respondent of the procedural rights and obligations of a respondent under this section; and

(b) A copy of the original complaint.

(H) All executive departments and agencies of the city shall administer their departments, programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this chapter and shall cooperate with the chief executive officer and the Commission to further the purposes.

(Ord. 1777, passed 6-7-93)

CHAPTER 93: FIRE REGULATIONS

Section

General Provisions

93.01 Establishment of fire zones

Fire Prevention

93.20 Open burning regulations

93.21 Modifications

93.22 Approved devices

93.23 Storage of inflammable liquids

93.24 Storing combustible material

93.25 Burning combustible material

Cross-reference:

Building Regulations, see Chapter 150

GENERAL PROVISIONS

§ 93.01 FIRE ZONES ESTABLISHED.

(A) *Boundaries.* All that part of the city within the following described zones shall be designated and known as the fire zone of the city. Beginning in the center of South Anderson Street at a point 62 feet south of the south line of the Conrail, formerly Nickel Plate Railroad, running thence east on the line to the northeast corner of Lot No. 12 in Barton's Fifth Addition to the city; thence south to the centerline of South "D" Street, thence east to the centerline of Main Street, thence west to the centerline of North 18th Street, thence north to the centerline of the first alley north of North "A" Street, thence west to the centerline of the first alley east of North Anderson Street, thence north to the centerline of North "C" Street, thence west on North "C" Street to the east line of the Conrail, formerly Nickel Plate Railroad, thence on and along the east line and in a northwesterly direction to the centerline of North "D" Street, thence west on North "D" Street to the centerline of the first alley east of North 12th Street, thence south to the centerline of the first alley north of North "A" Street, thence east to the centerline of North 13th Street, thence south on North 13th Street to the centerline of Main Street, thence east to the center of Duck Creek, thence on and along the center of Duck Creek to the centerline of the first alley south of South "A" Street, thence east to the centerline of the second alley west of South Anderson Street, thence south to the south line of the right of way of the Conrail, formerly Nickel Plate Railroad, thence east on the right-of-way to the centerline of the first alley west of South Anderson Street, thence

south to the centerline of South "D" Street, thence east on South "D" Street to the centerline of South Anderson Street, thence north on South Anderson Street to the place of beginning.
(‘66 Code, § 4-8-4-1)

(B) *Construction regulations.* No wooden buildings shall be erected or constructed within the fire zone, except as hereinafter permitted. No building shall be erected or constructed within the fire zone unless the same shall be erected or constructed in conformity with the following provisions.

(1) All outside and main partition walls shall be made of stone, brick, concrete block or other fire proof material.

(2) Outside and main partition walls not exceeding 24 feet in height from the top of the sidewalk to the underside of the roof joists or rafters shall be in thickness not less than eight inches if of brick, and not less than 16 inches if of stone, but such walls of stores, mills, warehouses and manufacturing establishments not exceeding 24 feet in height, measuring as aforesaid, shall be in thickness not less than 12 inches, if of brick, and not less than 18 inches if of stone. In any building of whatsoever kind exceeding three stories in height, the walls of the two lower stories shall be in thickness not less than 16 inches if of brick, and not less than 24 inches if of stone; all concrete block walls shall be not less than eight inches thick.

(3) All joists, beams and other timbers in outside and main partition walls shall be separated at least two inches from each other with stone or brick laid in mortar, and all wooden lintels or plate pieces in the front or rear walls shall recede from outside of the wall at least four inches, except that lintels of timber may be used in rear of metal fronts, and plates of wood may be used in cornices; but all cornices shall be securely fastened in the walls of the building with iron rods in such manner as that, in case of fire, they will not fail until burned to pieces.

(4) In all buildings of more than one story there shall not be more than 30 feet of space between the outside and main partition walls, unless the lower story of the building shall be supported by iron or other columns or supports of fireproof material between the walls.

(5) All end and partition walls shall extend above the sheeting of the roof at least seven inches or three courses of brick, and in no case shall planking or sheeting of the roof extend across any partition or end walls, provided that the words "main partition walls," as used by this subchapter, shall be construed to mean the partition walls as shall support joists.
(‘66 Code, § 4-8-4-2) (Ord. 1172, passed 10-3-66)

FIRE PREVENTION

§ 93.20 OPEN BURNING REGULATIONS.

(A) *General regulations.* No person shall burn or cause to be burned any trash, lumber, leaves,

straw or any other combustible material on any asphaltic or tar street or in a place, amount or manner or under such weather conditions as would endanger surrounding property. ('66 Code, § 4-8-2-1)

(B) *Combustibles*. Ashes, smoldering coals or embers, greasy or oily substances and other combustible receptacles shall not be placed or allowed to remain within eight feet of any combustible materials or construction made up of combustible receptacles. All receptacles containing substances shall be placed on a non-combustible floor or on the ground outside of the building and shall be kept at least two feet away from any combustible wall or partition. ('66 Code, § 4-8-2-2)

(C) *Accumulations*.

(1) No person shall permit to remain upon any roof or in a courtyard, vacant lot or open space, any accumulation of waste paper, hay, straw, grass, weeds, litter or combustible or inflammable waste or rubbish of any kind in a quantity as would constitute a fire hazard.

(2) Suitable presses shall be installed and used as needed in all stores, apartment houses, factories and similar places where waste paper and other combustible material rapidly accumulate. ('66 Code, § 4-8-2-3)
(Ord. 1172, passed 10-3-66)

§ 93.21 MODIFICATIONS.

The Fire Chief shall have power to modify any of the provisions of the city fire regulation relating to inspections upon application in writing by the owner or lessee, or by his duly authorized agent, when there are practical difficulties in the way of carrying out the strict letter of the sections; provided that the spirit of these sections shall be observed, public safety secured, and substantial justice done. The particulars of modification, when granted or allowed, and the decision of the Fire Chief thereon shall be entered upon the records of the Elwood Fire Department and a signed copy furnished the applicant. ('66 Code, § 4-8-2-4) (Ord. 1172, passed 10-3-66)

§ 93.22 APPROVED DEVICES.

As used in this subchapter the word "approved" as applied to devices or materials means acceptable to the Fire Chief by reason of having been tested and examined by him or by some recognized testing laboratory against fire hazard. ('66 Code, § 4-8-2-5) (Ord. 1172, passed 10-3-66)

§ 93.23 STORAGE OF INFLAMMABLE LIQUIDS.

(A) *Storing inflammable liquids*. By reason of the fire hazard and explosive hazard attending the storage of large quantities of inflammable liquids such as gasoline, kerosine, naphtha, benzine and other similar liquids, excepting fuel oil and distillate, located within the city, it is hereby declared unlawful

for any person to store or cause to be stored in tanks or other containers hereafter constructed or installed within the city, or to construct tanks or other containers for the purpose of storing inflammable liquids of combined capacities in excess of 5,000 gallons at any one location within the city. This shall not prohibit the underground storage of inflammables for retail outlets where the storage capacity does not exceed 18,000 gallons. ('66 Code, § 4-8-3-1)

(B) *Storage tank location.* The word "location" shall mean the occupation and use of an area occupied by storage and tankage and the area surrounding within a radius of 150 feet from the tankage or if a public street intervenes within 150 feet, then to the public street. ('66 Code, § 4-8-3-2)

(C) *Existing locations.* This subchapter shall not affect existing locations and uses thereof; provided, however, that in event and at the time of termination of the location now existing and discontinuance of the use for storage purposes now thereof made which would otherwise fall within the terms of these sanctions where the cessation of use shall extend over a period over four months, the reestablishment of which shall be prohibited except as conforming to the sections. ('66 Code, § 4-8-3-3)

(D) *Underground storage.* This subchapter shall not apply to or govern the storage of inflammable liquids upon or under the surface of premises of manufacturing or industrial plants, shops or factories intended for use therein, where liquids are not withdrawn for transportation or use away from the premises and the location of the tankage is in control of the owner of the plant and constitutes a part of the area occupied by the plant, shop or factory. ('66 Code, § 4-8-3-4)
(Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 93.24 STORING COMBUSTIBLE MATERIAL.

No person in this city shall have, buy or keep any hay or straw in a stack or pile without having the same enclosed or secured so as to protect it from flying sparks of fire. No person shall keep or permit to be kept in cellars or in the rear portion of storerooms or warehouses any hay, straw or combustible material.

('66 Code, § 4-8-4-6) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 93.25 BURNING COMBUSTIBLE MATERIAL.

No hay, straw, shavings or other combustible material shall be set fire to or burned within any street, alley or public or private grounds within the fire zones of the city, nor shall any substance be burned in any part of the city outside of the fire zones between sunset of one day and sunrise of the next succeeding day. In all cases, when the Elwood Police Chief shall deem the burning to be dangerous, he shall cause the same to be removed, or extinguished and to arrest the person who caused the burning, if the person shall refuse to obey his order in reference thereto.

('66 Code, § 4-8-4-7) (Ord. 1172, passed 10-3-66)

CHAPTER 94: NUISANCES

Section

General Provisions

- 94.01 Definition
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Noise Control

- 94.20 Scope
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- 94.22 Loud and unnecessary noise
- 94.23 Enumeration of certain prohibited acts
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GENERAL PROVISIONS

§ 94.01 DEFINITION.

For the purpose of this chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

NUISANCE. The doing of an unlawful act, the omitting to perform a duty or the suffering or permitting of any condition or thing to be or exist, which act, omission, condition or thing either:

- (1) Injures or endangers the comfort, repose, health or safety of others;

- (2) Offends decency;
 - (3) Is offensive to the senses;
 - (4) Unlawfully interferes with, obstructs, tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage;
 - (5) In any way renders other persons insecure in life or the use of property; or
 - (6) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.
- ('66 Code, § 4-9-1-1) (Ord. 1813, passed 8-7-95)

§ 94.02 NUISANCES ENUMERATED.

The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property of the following items, conditions or actions are hereby declared to be and constitute a nuisance; provided, however, this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive:

- (A) Vegetation which has attained a height of eight inches or more and has not been cut, mown or otherwise removed from private property which is abandoned, neglected or disregarded. Vegetation planted for some useful or ornamental purpose is excepted;
- (B) Vegetation, trees or woody growth on private property which, due to its proximity to any governmental property, right-of-way or easement, interferes with the public safety or lawful use of the governmental property, right-of-way or easement;
- (C) A condition which causes property to become a health or safety hazard, unless specifically authorized under existing laws and regulations;
- (D) Accumulation of rubbish, trash, refuse, junk and other abandoned materials, metals, lumber or other things;
- (E) Any condition which provides harborage for rats, mice, snakes and other vermin;
- (F) Any building or other structure which is in such a dilapidated condition that it is unfit for human use, occupancy, or habitation; kept in such an unsanitary condition that it is a menace to the health of people residing in the vicinity thereof; or presents a more than ordinarily dangerous fire hazard in the vicinity where it is located;
- (G) All unnecessary or unauthorized noises and annoying vibrations, including noises;

(H) All disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of odors and stenches;

(I) The carcasses of animals or fowl not disposed of within a reasonable time after death;

(J) The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, dead animals, creamery, industrial wastes or other substances;

(K) Any building, structure or other place or location where any activity which is in violation of local, state or federal law is conducted, performed or maintained;

(L) Any accumulation of stagnant water permitted or maintained on any lot or piece of ground;

(M) Dense smoke, noxious fumes, gas, soot or cinders;

(N) The unauthorized obstruction of any public street, road or sidewalk;

(O) Any abandoned vehicle including but not limited to automobiles, trucks, trailers, campers, boats and recreational vehicles;

(P) Any machinery on any lot which contains any type of residential use, trash, garbage or other waste shall not be kept or stored outside of an enclosed building except in sanitary containers. All incinerators or other equipment for the storage or disposal of material shall be kept in clean and in sanitary condition. The term waste shall include, but not be limited to, all discarded household furniture, appliances, building materials, tools, toys, automotive or other mechanical parts, farm machinery, and other household fixtures and equipment or parts thereof which are not in use within the subject premises. Storage of the items shall be restricted to the area within the principal residential building or to enclosed accessory buildings such as garages, garden sheds, and storage buildings. Exterior storage of items is forbidden is hereby added;

(Q) Any structure not built or manufactured for permanent residence shall not be used as a dwelling; and

(R) Trash and trash receptacles shall not be placed at curbside for pick-up before 6:00 p.m. on the evening proceeding scheduled pick up day. All receptacles shall be removed from curbside by 6:00 p.m. of scheduled pick up day.

(‘66 Code, § 4-9-1-2) (Ord. 1813, passed 8-7-95; Am. Ord. 1813, passed 6-3-96) Penalty, see § 10.99
Statutory reference:

For provisions on the authority to enter onto real property, correct ordinance violations and obtain lien for same, see I.C. 36-1-6-2.

For provisions on the municipal home rule, see I.C. 36-1-3-1 et seq.

§ 94.03 NUISANCES PROHIBITED.

It shall be unlawful for any property owner, occupant or other person, to allow a nuisance to exist. ('66 Code, § 4-9-1-3) (Ord. 1813, passed 8-7-95) Penalty, see § 10.99

§ 94.04 ABATEMENT AND ENFORCEMENT PROCEDURES.

(A) (1) *Abatement procedures.* The Planning Director also known as Building Inspector, Building Commissioner and Planning Commissioner and law enforcement officers may at any time require the owner and/or occupant of any property upon which a nuisance as herein defined to do all things necessary to remove the nuisance from the property by giving the owner and/or occupant ten days' written notice to the existence of the nuisance. The notice as herein required shall state the nature of the alleged nuisance and the action deemed necessary to correct the condition and shall fix a date not sooner than ten days from the date of the mailing of the notice when the property owner and/or occupant must remove the nuisance. All notices as herein required shall be sent certified mail, no return receipt, or personal service, to the occupant or owner at the address of the property, if it be a dwelling, and to the last known address of the owner as reflected in the tax rolls of the city, township or the county.

(2) Upon the failure of the owner and/or occupant to cause the abatement of the nuisance as required by this section, the Planning Director may proceed at once to cause to be abated the nuisance and charge the cost thereof against the owner and/or occupant of the property. The liability created herein shall be joint and several as to the owners and any occupants or tenants. The charges incurred shall be certified to the Madison County Auditor and shall become a lien on the real estate.

(B) *Enforcement procedures.* In lieu of the abatement procedures set forth in division (A) of this section, the Building Inspector, Building Commissioner, Planning Director, Planning Commissioner, and any law enforcement officer may, in his or her sole discretion, cite a violation of § 94.02(A), (B), (D), (E), (G), (H), (L), (M), (N), or (O) directly into the City Court, or other Court of competent jurisdiction, for enforcement of said violations.

('66 Code, § 4-9-1-4) (Ord. 1813, passed 8-7-95; Am. Ord. 1955, passed 9-5-00; Am. Ord. 1813, passed 8-9-04)

§ 94.05 COLLECTION OF FEES.

The Planning Commission shall, upon completion of all acts necessary to abate the nuisance, send a statement to the owner and/or occupant of the property notifying the owner and/or occupant of the fees and charges owing to the city for its services. Upon the failure of the owner and/or occupant to pay the fees and charges in full within 30 days, the Planning Commission then may cause charges and fees to be placed upon the tax duplicate and collected the same as taxes. The Planning Commission may, in

the alternative, refer the charges and fees to the City Attorney who shall forthwith collect the fees and charges by civil process.

('66 Code, § 4-9-1-5) (Ord. 1813, passed 8-7-95)

Statutory reference:

For provisions on the authority to enter onto real property, correct ordinance violations and obtain a lien for same, see I.C. 36-1-6-2

§ 94.06 AUTHORITY OF PLANNING COMMISSION.

The Planning Commission shall, where necessary, designate individuals and institute procedures to carry into force and effect this chapter.

('66 Code, § 4-9-1-6) (Ord. 1813, passed 8-7-95)

§ 94.07 SUPPLEMENTAL REGULATIONS.

The provisions of this chapter are hereby declared to be supplemental to all other ordinances of the city.

('66 Code, § 4-9-1-7) (Ord. 1813, passed 8-7-95)

§ 94.08 RADIO AND TELEVISION INTERFERENCE.

(A) *Interference declared a public nuisance.*

(1) The use of "D.C." meters, universal meters or violet ray machines between the hours of 6:00 p.m. and 11:00 p.m. shall be deemed and hereby declared a public nuisance.

(2) The running, operating or other use of electrical equipment of electricity except X-ray machines used in cases of emergency, and street and interurban cars, which shall cause interference with or distort radio or television reception within the city between the hours of 6:00 p.m. and 11:00 p.m. shall be deemed and hereby is declared to be a public nuisance.

('66 Code, § 5-2-1-1)

(B) *Prohibited uses.*

(1) It shall be unlawful for any person, firm or corporation to use any "D.C." meter, universal meter or violet ray machine within the city between the hours of 6:00 p.m. and 11:00 p.m.; and

(2) It shall be unlawful for any person, firm or corporation to use, run or operate any electrical equipment, electrical appliance or electricity, except an X-ray machine used in cases of emergency, and street or interurban cars, equipment, appliance or current shall cause interference with or distort radio or television reception within the city between the hours of 6:00 p.m. and 11:00 p.m.

('66 Code, § 5-2-1-2)

(C) *Intentional interference.* It shall be unlawful for any person, firm or corporation to use, run or operate any electrical equipment, electrical appliance or electricity except an X-ray machine used in cases of emergency, and street or interurban cars, which the equipment, appliance or current shall intentionally cause interference with or distort radio or television reception within the city, during any hour of day or night. ('66 Code, § 5-2-1-3)
(Ord. 1172, passed 10-3-66) Penalty, see § 10.99

NOISE CONTROL

§ 94.20 SCOPE.

This subchapter shall apply to the control of all noise within the city limits, as they exist now or may hereafter be established.
(Ord. 1841, passed 6-5-95)

§ 94.21 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

MOTOR VEHICLE. Any vehicle powered by a mechanical engine, and designed to be driven or used on any public or private property. The definition shall include, but not be limited to: automobiles, vans, trucks, motorcycles, motor scooters, dune buggies, snowmobiles, all-terrain vehicles, go-carts, minibikes and trail bikes.

PERSON. Any individual, association, partnership or corporation which includes any officer, employee, department, agency or instrumentality.
(Ord. 1841, passed 6-5-95)

§ 94.22 LOUD AND UNNECESSARY NOISE.

(A) It shall be a violation of this subchapter for a person to make any loud, raucous, improper, unreasonable, offensive or unusual noise or disorder of tumult, which disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the city or to permit noise, disorder or tumult to be made in or about his or her house or premises, and the same is hereby declared to be a public nuisance.

(B) Further, it shall be the duty of every owner, occupant, manager, agent or operator of any property, structure, vehicle, or business in the city, to prevent persons using property under their control from violating this subchapter.

(Ord. 1841, passed 6-5-95) Penalty, see § 10.99

§ 94.23 ENUMERATION OF CERTAIN PROHIBITED ACTS.

The following acts, uses or noises, among others, subject to specific exemptions, are declared to be loud, raucous or disturbing noises in violation of this subchapter. The enumeration shall not be deemed to be exclusive:

(A) Using, operating or permitting to be played, used or operated any machine or device for producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the person who is in the room, vehicle or property in which the machine or device is operated and who is a voluntary listener.

(B) Using, operating or permitting the use or operation of any machine, instrument or device capable of producing or reproducing of sound which is cast upon other properties including the public right-of-way for the purposes of commercial advertising or to attract attention to any activity, performance, sale or place of structure.

(C) Using, operating or permitting the use or operation of any machine, instrument or device capable of producing or reproducing any sound on any public transportation vehicle.

(D) Using, operating or permitting to be played, used or operated any machine or device for the producing or reproducing of sound of any public right-of-way adjacent to any school, institution of higher learning, church or court while the same are in use or adjacent to any hospital which unreasonably interferes with the working of the institution or which unduly disturbs patients in the hospital.

(Ord. 1841, passed 6-5-95) Penalty, see § 10.99

§ 94.24 PROHIBITED NOISE.

No person shall play, use, operate or permit to be played, used or operated, any machine or device for the producing or reproducing of sound, if it is located in or on any of the following:

(A) Any public property, including any public right-of-way, highway, building, sidewalk, park or thoroughfare, if the sound generated is audible at a distance of 30 feet from its source; and

(B) Any motor vehicle on a public right-of-way, highway or public space if the sound generated is audible at a distance of 30 feet from the device producing the sound.

(Ord. 1841, passed 6-5-95) Penalty, see § 10.99

§ 94.25 MOTOR VEHICLE NOISE.

The following acts are declared to be a public nuisance, but the enumeration of the particular offenses hereinafter particularly defined shall not be construed as limiting the generality of this subchapter, or limiting the offense hereunder to the particular offense hereinafter enumerated:

(A) The continuous or repeated sounding of any horn or signal device of a motor vehicle when not used as a danger signal. Continuous shall be defined to include unnecessary or unreasonable periods of time.

(B) The use of any motor vehicle with appurtenances attached thereto so as to create loud or unnecessary grating, grinding, rattling or other noise.

(C) The use of any motor vehicle with or without the attachment of various appurtenances thereto so as to create loud or unnecessary grating, grinding, rattling or other noise or noises. This shall include the use of any vehicle the use of which causes excessive noise as a result of a defective or modified exhaust system, or as a result of unnecessary rapid acceleration, deceleration, revving the engine or tire squeal.

(Ord. 1841, passed 6-5-95) Penalty, see § 10.99

§ 94.26 EXEMPTIONS.

Exemptions shall not be permitted within any duly established quiet zone when the zone is designated by appropriate signage. The following shall be exempted from the provisions of this subchapter:

(A) Sound emitted from sirens of authorized emergency vehicles;

(B) Lawn mowers, garden tractors and similar home power tools when properly muffled, between the hours of 7:00 a.m. and 10:00 p.m.;

(C) Burglar alarms or other warning devices when properly installed on public or private property, providing the cause for alarm or warning device sound is investigated and turned off within a reasonable period of time;

(D) Celebrations on Halloween and legal holidays;

(E) Permitted parades or festivals, between the hours of 8:00 a.m. and 12:00 a.m., Sunday through Thursday; and between 8:00 a.m. and 1:00 a.m., Friday through Saturday;

(F) Attendant noise connected with the actual performance of athletic or sporting events and practices related to them;

(G) The emission of sound for the purposes of alerting persons to the existence of an emergency, or for the performance of emergency work;

(H) Sounds associated with normal conduction of a legally established non-transient business when the sounds are customary, incidental and within the normal range appropriate for such use; and

(I) In the case of motor vehicles, where the noise is the result of a defective or modified exhaust system, if the cause is repaired or otherwise remedied within seven calendar days.
(Ord. 1841, passed 6-5-95)

CHAPTER 95: PARKS

Section

General Provisions

95.01 Authority and jurisdiction

Calloway Park Regulations

- 95.15 Closing hours of park
- 95.16 Vehicle regulations
- 95.17 Damage to property prohibited
- 95.18 Immoral and disorderly conduct prohibited
- 95.19 Littering prohibited
- 95.20 Animals in owner's control
- 95.21 Pets in city parks
- 95.22 Intoxicating liquors prohibited

Cross-reference:

Park and Recreation Board, see § 33.07

GENERAL PROVISIONS

§ 95.01 AUTHORITY AND JURISDICTION.

The authority and jurisdiction of the Elwood Park Department shall include Kiwanis Park, Wendell L. Welkie Memorial Park, Calloway Park, the tennis and basketball courts located next to the Elwood swimming pool, the Elwood swimming pool, the Babe Ruth Park, Elwood Athletic Association football field, Little League baseball area and the old high school football field located on Calloway Park property.

('66 Code, § 7-1-1-1) (Ord. 1412, passed - -76; Am. Ord. 1412, passed 5-12-78)

CALLOWAY PARK REGULATIONS**§ 95.15 CLOSING HOUR OF PARK.**

The park shall close every night at 10:00 p.m. unless special permission shall be given to keep it open later.

('66 Code, § 7-1-2-8) (Ord. 1172, passed 10-3-66)

§ 95.16 VEHICLE REGULATIONS.

(A) It shall be unlawful for any automobile or motorcycle to be driven through the park other than on designated roadways, without special permission of the person or persons in charge of the park.

(B) No vehicle of any kind shall be allowed to stand in any drive or roadway.

(C) No automobile or motorcycle shall be operated or run in the park at a greater speed than ten miles an hour.

(D) No automobile or motorcycle shall be run or operated in any manner in the park with the muffler open.

('66 Code, § 7-1-2-7) (Ord. 418, passed 6-16-19) Penalty, see § 10.99

§ 95.17 DAMAGE TO PROPERTY PROHIBITED.

It shall be unlawful for any person to maliciously, mischievously, purposely or carelessly cut, break, deface or otherwise injure any tree, shrub, building, seat, plant, flower or other property belonging to or situated in the park.

('66 Code, § 7-1-2-4) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 95.18 IMMORAL OR DISORDERLY CONDUCT PROHIBITED.

It shall be unlawful for any person to engage in immoral, rude, indecent, disorderly or boisterous conduct in the park.

('66 Code, § 7-1-2-5) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 95.19 LITTERING PROHIBITED.

It shall be unlawful for any person to throw any bottles, waste paper or refuse upon any part of the park. Paper or refuse must be deposited in proper receptacles maintained by the Park and Recreation Board and all bottles must be returned to the stand where purchased.

(‘66 Code, § 7-1-2-3) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 95.20 ANIMALS IN OWNER’S CONTROL.

It shall be unlawful for any person to leave any horse or other animal, ridden or led by him or her in his custody, unattended in any part of the park, unless the horse or other animal is securely tied to a hitch rack.

(‘66 Code, § 7-1-2-2) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 95.21 PETS IN CITY PARKS.

(A) No person shall allow any pet in his or her custody, whether that pet be owned by that person or harbored by that person, to enter upon any part of the grounds of any city park, unless the pet is on a leash, which leash shall not exceed eight feet in length.

(B) It shall be the responsibility of any person bringing a pet into a city park to clean up any matter excreted by the pet.

(C) Leashed pets are not prohibited except in the following areas of any park:

- (1) Amphitheater;
- (2) Swimming pools and pool areas;
- (3) Tennis courts;
- (4) Golf course; and
- (5) Within 20 feet of playground equipment or playground areas.

(D) Pets may be prohibited for special events, such as festivals, or other special events conducted by third parties, or city agencies. This prohibition shall not apply to those animals that are part of a performance, exhibit, or other activity conducted as part of a festival or event.

(E) Subsections (C) and (D) of this section shall not apply to any guide dog specially trained for the purpose of accompanying a totally or partially blind person or a deaf person, or a service dog specially

trained for the purpose of accompanying a physically disabled person, or a dog trained and licensed by and in possession of the Elwood Police Department or any other law enforcement agency.

(F) Violators of this section shall be subject to penalty pursuant to § 10.99.
(‘66 Code, § 7-1-2-1) (Ord. 1172, passed 10-3-66; Am. Ord. 2307, passed 6-4-18) Penalty, see § 10.99

§ 95.22 INTOXICATING LIQUORS PROHIBITED.

No intoxicating liquors shall be allowed on or in the park.
(‘66 Code, § 7-1-2-6) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

CHAPTER 96: STREETS AND SIDEWALKS

Section

General Provisions

- 96.01 Established street grade
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- 96.05 Reconstruction of sidewalk
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GENERAL PROVISIONS

§ 96.01 ESTABLISHING STREET GRADE.

It shall be unlawful for any person, firm or corporation, acting either for himself or itself or as contractor, sub-contractor, principal agent, employer or employee to make, build, construct or resurface any street or other public highway with brick, stone, gravel, macadam, cement, asphalt or other material, at or on any other grade than on the grade of the street or highway as established by the city. ('66 Code, § 4-5-1-1) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 96.02 BACKFILLING.

For the preservation of the streets, alleys and highways of the city, all excavated places, ditches, trenched, pits and holes of every character cut six inches or more into the sub-base of any brick, concrete or other hard surfaced or permanent improved street, alley or highway within the city, shall be backfilled and built up as follows:

(A) Material for backfill shall consist of suitable dry or damp excavated material, sand, gravel, crushed stone, cement concrete or bituminous concrete. Excavated materials too wet or rammed solidly in place shall not be used.

(B) The sub-base excavation shall be built up in layers not more than six inches in thickness, each layer thoroughly rammed until solid. Excavated materials too wet to tamp solidly shall be discarded and sand, gravel or crushed stone provided and used in place thereof. In all cases, the materials used shall be such as to give a solid compact mass.

(C) The paved excavation shall be cut to additional width as to provide not less than eight inches solid bearing on all sides of the excavated opening made in the sub-base. The excavation of surface materials or pavement shall be made with perpendicular sides through both the wearing course and base.

(D) The excavated opening from the sub-base surface to the finished surface of the improvement shall be built up of cement concrete or cement concrete and bituminous wearing surface. In no case shall the entire thickness of the cement concrete be less than six inches and in all cases shall be carried down to solid sub-base.

(E) Cement concrete shall consist of one part Portland Cement, to 2½-parts clean washed sand and not more than five parts clean washed gravel or crushed stone. All materials shall be kept clean and subject to the approval of the City Civil Engineer and his decision as to their fitness shall be final and

binding on all parties. The concrete shall be thoroughly mixed until homogeneous, (at least twice dry and twice wet before placing) and to uniform consistency that will produce moisture when tamped in place. When cement concrete only is used, the finish surface shall be brought up flush with the paved surface of the roadway and finished with a wood float.

(F) The wearing surface, when advisable and deemed necessary by the City Engineer, shall consist of bituminous concrete or asphalt and applied in such manner and times as the he or she may direct.

(G) In all cases the patched surface shall be properly protected from the weather and elements until thoroughly hard, and from the traffic by suitable barricades and red lights and the city indemnified and saved harmless of any and all claims, liabilities and damages whatsoever.
(‘66 Code, § 4-5-1-2) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 96.03 TRACTION ENGINES.

It shall be unlawful for any person to operate any traction engine over and along any brick-paved street, macadam street or other improved street in the city, without placing under the wheels thereof boards of the full width of the wheels of sufficient thickness to prevent the wheels from coming in contact with the surface of the street.

(‘66 Code, § 4-5-1-3) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 96.04 DEFINITION OF SIDEWALK; APPLICATION.

(A) A “section of sidewalk” is defined as that rectangular block between contraction joints.

(B) The provisions of this chapter shall apply to curbs as well as sidewalks.
(‘66 Code, § 4-5-2-1) (Ord. 1172, passed 10-3-66)

§ 96.05 RECONSTRUCTION OF SIDEWALKS.

(A) *Reconstruction permit.* No person, firm or corporation shall cut into, dig into or damage any sidewalk within the city, without first procuring a permit from the Building Commissioner. (‘66 Code, § 4-5-2-2)

(B) *Bond required.*

(1) At the time of the issuance of a permit by the Clerk-Treasurer, the person, firm or corporation cutting into, digging into or damaging the sidewalk, shall give the description and location of where they will be doing the work and the number of sections of walk to be affected, at which time the person, firm or corporation shall post a bond, either cash or surety, with the Clerk-Treasurer in an amount of not less than \$1 for each square foot of sidewalk that will be damaged. In computing the amount to be damaged, it shall be computed on the basis of a section or number of sections.

(2) The giving of a performance bond shall not be required of the city or of the city-owned utilities, however, they shall comply with all other provisions of § 96.04 and this section. ('66 Code, § 4-5-2-3)

(C) *Material requirements.* Each person, firm or corporation doing the work referred to in § 96.04 and this section shall use materials and perform the workmanship that is equal to or of better quality than the existing walk and if any part of the existing section damaged, the entire section must be replaced. The phase for the walk shall be of clean granular fill. ('66 Code, § 4-5-2-4)

(D) *Inspection.* When the person, firm or corporation is ready to pour the concrete for the sidewalk, the City Engineer shall be notified so that the same can be inspected and after the inspection and upon approval by the City Engineer and/or Building Commissioner, or his legally appointed assistant, the performance bond above mentioned will be refunded or released, as the case may be. ('66 Code, § 4-5-2-5)
(Ord. 1172, passed 10-3-66)

§ 96.06 RECONSTRUCTION OF SIDEWALKS.

(A) *New construction permit.* It shall be unlawful for any person, except a person doing work under contract with the city, to construct any sidewalk upon any street or public highway within the city without first obtaining the consent of the Building Commissioner and otherwise complying with the provisions of divisions (B) and (C) below. ('66 Code, § 4-5-2-6)

(B) *Application.* Any person desiring to construct a sidewalk upon any street in the city shall present a written petition signed by the person or persons desiring to construct the sidewalk, to the Building Commissioner stating the location of the sidewalk and the kind of sidewalk proposed to be built. If the proposed sidewalk conforms to the requirements hereinafter set out, permission will be granted to construct the walk; provided however, that the plans and specifications for the same shall be furnished by the City Engineer and/or Building Commissioner, and the same shall be constructed under his supervision and subject to his approval. ('66 Code, § 4-5-2-7)

(C) *Method and materials.* All cement sidewalks hereafter built in the city shall be constructed by making an excavation to a depth of 14 inches below the sidewalk grade. The foundation or sub-base should be of clean hard cinders, crushed stone, gravel or sand, nine inches in depth, and thoroughly compacted. One side foundation shall be placed with a 4 ¼-inch base composed of one part cement, 2½-parts of gravel, and five parts sand, and on the side base shall be spread a ¾-inch wearing surface composed of two parts cement to three parts screened torpedo gravel. ('66 Code, § 4-5-2-8)
(Ord. 1172, passed 10-3-66)

§ 96.07 NONCONFORMING SIDEWALKS.

Any sidewalk not built according to the provisions of § 96.06 (B) and (C) may be condemned by the Building Commissioner and at his or her direction removed by the Street Commissioner or Civil Engineer.

(‘66 Code, § 4-5-2-9) (Ord. 1172, passed 10-3-66)

§ 96.08 REMOVAL OF SNOW, ICE AND DIRT.

The owner or occupant of any lot or premises within the city shall remove all snow, ice and dirt from the sidewalk in front of the lot or premises, and every person failing to comply with the provisions of this section within 24 hours after any fall of snow, or who shall fail to remove any ice or dirt from the sidewalk five hours after being notified by the Elwood Police Chief, shall be in violation of this section.

(‘66 Code, § 4-5-2-16) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 96.09 BICYCLES PROHIBITED.

No person shall ride any bicycle on and along any of the sidewalks of the city, except in crossing the same.

(‘66 Code, § 4-5-2-17) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 96.10 OBSTRUCTING SIDEWALKS.

(A) No person shall in any manner prevent, obstruct, hinder or delay the free passage and clear view on along or across any sidewalk in the city, by placing, leaving or permitting to be placed or left thereon, any building material, vehicle, animal, furniture, agricultural implements, stove, boxes, barrels, kegs, bales, packages, goods, wares, merchandise, chicken coups, livestock, fish, fruit or vegetable stands or any other articles of materials whatever, by hanging or suspending along or over any sidewalk, any goods, merchandise or other articles of any character.

(B) Nothing herein contained shall prevent any person from loading, unloading and conveying across a sidewalk any articles as may be necessary in the ordinary affairs of business.

(C) Any person desiring to erect or repair any building may obtain from the Building Commissioner a permit to use a portion of the sidewalk as may be necessary there for a period not exceeding 60 days.

(‘66 Code, § 4-5-2-18) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 96.11 GASOLINE PUMPS PROHIBITED; EXCEPTION.

(A) It shall be unlawful for any person, firm or corporation to build, construct or install any gasoline or oil pump in any lawn, gutter curb, or sidewalk located within the city limits.

(B) The words lawn, gutter or sidewalks as used herein shall mean that area of ground between the curb line or the street line and the property line adjacent to and paralleling the street or curb line. The area shall be that which is ordinarily considered public property and not owned by the property owner. ('66 Code, § 4-5-2-19)

(C) Divisions (A) and (B) above shall not affect any gasoline pump installed in the lawn, gutter, curb or sidewalks of the city which may have been installed prior to March 28, 1931, providing that at the termination of use of the gasoline pump existing on March 28, 1931, and discontinuance of uses now made thereof for a period in excess of four months, shall be considered a new installation, the reestablishment of which shall be prohibited.

(D) Shall any gasoline or oil pump which may have been installed or placed in any lawn, gutter, curb or sidewalk within the city prior to March 28, 1931, become unfit for service or be condemned by the Weights and Measures Department of the state or of the United States, then the owners thereof shall have the right to replace the defective gasoline or oil pump or have the same repaired to make it fit for service, providing that the replacement or repair to the defective gasoline or oil pump shall be completed within a period not to exceed four months from discontinuance of use thereof. ('66 Code, § 4-5-2-20) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

SIDEWALK REPAIR PROCEDURES**§ 96.25 DUTY OF OWNER TO REPAIR.**

(A) Whenever the owner of any lot or part of lot, on any street or alley in the city, shall permit the sidewalk or any part of the same along or in front of a lot or part of lot, to become out of repair, it shall be the duty of the Street Commissioner of the city to immediately notify the owner or owners of the lot or part of lot of the fact of the sidewalk being out of repair. The notice shall be printed or in writing and addressed or delivered to the owner or owners if their present address be known to the Street

Commissioner. The notice shall state specifically the number or description of the lot or part of a lot; the nature and extent of the repairs necessary to be made to the sidewalk; the probable cost thereof and fixing a time not more than 20 nor less than ten days in which the owner or owners are required to make and complete the repairs as indicated in the notice as aforesaid. Provided: that if a sidewalk be dangerous, the Street Commissioner may cause repairs to be made immediately and without any notice to the owner or owners of the lot or part of lot along or in front of which a dangerous sidewalk is situated.

(B) Service of the notice as aforesaid may be had and made on the owner, his resident agent, if known, to the Street Commissioner, or upon the person or persons in possession of the lot or part of lot, in the order named and if the owner or owners of the lot or part of lot shall be non-resident of the city and shall have written any agent or person or persons in possession of the lot or part of lot, then notice of the proposed repairs shall be given by publication in a daily newspaper of general circulation published in the city, for three successive days, which notice shall state the matters and things provided to be given to a resident owner of a lot or part of a lot. The cost of the publication shall be charged and collected by the city as an item of expense in making the repairs to the sidewalk therein mentioned. ('66 Code, § 4-5-2-10) (Ord. 1172, passed 10-3-66)

§ 96.26 FAILURE TO REPAIR.

In case the owner or owners of any lot or part of a lot on any street or alley of the city shall fail or refuse to repair the sidewalk in front of or along his or their respective properties, after service of the notice as required in § 96.25 and within the time therein fixed for the making of repairs and as indicated and set out in the notice, to the satisfaction or approval of the Street Commissioner shall make the repairs and furnish the necessary labor and materials therefor. The repairs, so made by the Street Commissioner shall be of a like kind and materials as the part of the sidewalk in good repair. The cost for the labor and materials so used by the Street Commissioner in making repairs shall not exceed \$50 for each lot or part of a lot.

('66 Code, § 4-5-2-11) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 96.27 STREET COMMISSIONER'S REPORT OF REPAIRS; ASSESSMENT.

(A) The Street Commissioner shall, at the next Council meeting after the completion of the repairs as described in § 96.26, report to the Council an itemized statement of the costs of the repairs so made by him and shall include in the report all items of expense for labor and materials used and for the publication of the notice as provided for in § 96.25. If publication shall have been necessary, the Common Council shall within 20 days after the filing of a report by the Street Commissioner, act upon the report at a regular or special meeting thereof of which five days notice shall be given by publication in a newspaper of general circulation in the city, setting forth the location, the kind and extent of same and the date of the filing of the Street Commissioner's report at which the Common Council shall meet for the purpose of confirming or modifying the amount of the assessment and charge made by the Street Commissioner and that any person interested may appear thereat and make objections to confirmation or modification. At the meeting the Common Council shall give opportunity for hearing to all parties

interested as to any objections they may have to an assessment or change and amend the report as to the assessment of property.

(B) The adoption of the report as made by the Street Commissioner or as changed and amended by the Common Council shall constitute an assessment or benefit for the repairs. The several amounts therein set out as an assessment against any lot or part of a lot shall be a lien thereon from the date of action by the Common Council and shall thereafter bear interest at the rate of 5% per annum. After the assessment as herein provided has been made by the Common Council, no suit shall lie to enjoin or restrain the collection thereof and the validity of the assessment shall not be questioned, except on appeal as herein provided for.

('66 Code, § 4-5-2-12) (Ord. 1172, passed 10-3-66)

§ 96.28 APPEAL BY SIDEWALK OWNER.

(A) Any owner or owners of any lot or part of a lot upon which the costs of sidewalk repairs have been assessed may appeal to the Madison County Circuit Court from the action of the Common Council within ten days thereafter by filing with the Clerk-Treasurer a written undertaking with surety to the approval of the Clerk-Treasurer, conditioned that he will duly prosecute and pay any and all costs that may be adjudged against him and filing therewith a statement of his grievances to wit:

- (1) That the proceedings for the making of the repairs and the assessment thereon are invalid.
- (2) That the amount of assessment to his or her property is too high.

(B) The Clerk-Treasurer shall thereupon make and file with the clerk of the court a transcript of the proceedings. The appeal shall be tried by the court without the intervention of a jury and no question shall be tried on appeal except the grievances set out in the statement of the aggrieved party filed with the Clerk-Treasurer. If the party appealing fails to reduce his assessment of benefits 10%, he shall pay the costs of an appeal. In the event there is a reduction of the amount of the assessment in the sum of 10%, however, then the city shall pay the costs of the appeal and the court shall have the power on the appeal to reduce the assessment of the property appealing and to modify the assessment as to make an assessment conform to the benefits derived from the repairs so made.

('66 Code, § 4-5-2-13) (Ord. 1172, passed 10-3-66)

§ 96.29 LIENS; FORECLOSURES.

The assessments as made, together with the interest thereon, shall be a lien upon the several lots or parts of lots so benefitted to the same extent that taxes are a lien upon property, and shall be collectable in two annual installments in the same way that taxes are collected. Assessments shall be placed upon the city tax duplicate and charged against the several lots or parts of lots as follows:

(A) 50% for each successive year for two years, to which several amounts shall be added and placed on duplicate, interest at 5% per annum payable semi-annually, which shall be calculated from

the date of the assessment until the several installments fall due; and the first 50% of the assessment shall be due and payable when the first city tax falls due and is payable after the assessment is made. If any installment of the assessment shall become delinquent the same penalty shall be added thereto as to delinquent taxes and the delinquent installment shall be collected in the same manner that delinquent taxes are collected or may be collected by foreclosure of the lien thereof in any court of competent jurisdiction as a mortgage is foreclosed. The city may bring action by its attorney and in such action may recover, in addition to the amount of the lien and the costs of proceedings, a reasonable attorney's fee for the use of its attorney for enforcing the lien and property shall be sold without relief from valuation or appraisal laws and upon the sale of the property.

(B) If no other person bid the amount of the judgement and all costs, the city may purchase the property for judgement and all costs and if not redeemed within one year from the time of sale, the sheriff shall issue to the holder of the certificate of sale a deed for the property, and the city, if the deed be issued to it, shall become the absolute owner of the property. Provided that any person may pay the whole assessment against any lot or part of a lot, with interest up to the date of payment, at any time before any part or installment of the assessment becomes due.
(‘66 Code, § 4-5-2-14) (Ord. 1172, passed 10-3-66)

§ 96.30 DISCHARGE OF LIEN.

Whenever any payment shall be made on an assessment, it shall be the duty of the Clerk-Treasurer to enter upon the proper record the receipt of money, and the receipt shall be a discharge of the lien of the assessment to the extent of the payment. If the payment shall be in full of principal and interest, the payment shall be a complete discharge of the assessment.
(‘66 Code, § 4-5-2-15) (Ord. 1172, passed 10-3-66)

MOVING BUILDINGS

§ 96.45 PERMIT REQUIRED; APPLICATION.

(A) It shall be unlawful for any person or persons to move any building over, across or along any street, sidewalk or alley in the city without first obtaining a permit so to do from the Board of Public Works and Safety of the city. (‘66 Code, § 4-5-1-4)

(B) (1) The permit mentioned in division (A) above shall be based upon a formal petition in writing addressed to the Board of Public Works and Safety.

(2) The petition shall distinctly set forth the points from and to which the removal is to be made, the location from and to which the building is to be removed. It shall accurately describe the building and shall set forth specifically the route to be taken, and streets, sidewalks and alleys to be passed over.

(3) No building shall be removed over any other street, sidewalk, alley or route than specified in the petition granting the permit.

('66 Code, § 4-5-1-5) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 96.46 BOND REQUIRED.

(A) (1) The Clerk-Treasurer when requested so to do by any person, persons, firm or corporation desiring to move any building shall prepare the formal petition in writing addressed to the Board of Public Works and Safety for which services, he shall charge a fee of \$.25 to the person, persons, firm or corporation for whom he prepares the petition. The Clerk-Treasurer shall also issue to the person, persons, firm or corporation to whom any permit is granted by the Board of Public Works and Safety a duly certified copy thereof, under his hand and seal, for which services he shall charge a fee of \$.50 to the person, persons, firm or corporation receiving the same, provided however that no certified copy of the permit shall be issued until the person, persons, firm or corporation entitled thereto shall have filed with the Clerk-Treasurer a bond in the penal sum of \$500, with good free-holders or with a surety company thereon as surety, subject to the approval of the Clerk-Treasurer conditioned for the faithful and prompt performance of the work, according to specifications in the permit and further conditioned to secure the city from all damages to streets, sidewalks, alleys and other public places, and to secure the property owners of the city against damages to their private property.

(2) Any person, persons, firm or corporation desiring to engage in the business of house moving within the city may file with the Clerk-Treasurer their bond in the penal sum of \$2,500 with like security as the bond subject to the approval of the Clerk-Treasurer, which bond shall be for a period of one year from the date of its filing with the Clerk-Treasurer, and shall be conditioned upon the faithful and prompt performance of all the work of the person, persons, firm or corporation of moving buildings over the streets of the city as aforesaid during the year, according to specifications, in the permits and shall be further conditioned to secure the city from all damages to streets, sidewalks, alleys and other public places and shall be further conditioned to protect the citizens and property owners of the city against damages to their private property, and when the annual bond is filed by the person, persons, firm or corporation then it shall not be necessary for the person, persons, firm or corporation to file the aforesaid bond in the penal sum of \$500 with each permit.

(B) Until the bond is thus filed with and approved by the Clerk-Treasurer, the person, persons, firm or corporation receiving the permit or permits shall not in any case move or remove the building described in the permit or permits over, across or along any of the improved streets, alleys, sidewalks or other public places of the city.

(C) The bonds above mentioned shall be made payable to the state for the use and benefit of the city or anyone damaged by the removal and the city or anyone so damaged may maintain an action or actions for damages on the bond.

('66 Code, § 4-5-1-7) (Ord. 1172, passed 10-3-66)

§ 96.47 TIME LIMITS; DELAYS.

It shall be unlawful for any person to make any unnecessary stoppage or delays upon any street, sidewalk or alley, permit the building to remain in any one place more than 24 hours when removing a building or to occupy more than six days (exclusive of Sunday) in the transit from the old to the new location. Lights and proper guards shall be placed upon the building by the persons moving the same, when the building is left in the street, sidewalk or alleys of the city overnight.

(‘66 Code, § 4-5-1-8) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 96.48 DAMAGE TO STREET.

If any person shall injure any street, sidewalk or alley of the city, over and along which he shall remove or cause to be removed any building, he shall repair the same within 24 hours to the satisfaction of the Board of Public Works and Safety.

(‘66 Code, § 4-5-1-9) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

[Section 96.60 begins on page 64.]

TREES AND SHRUBS**§ 96.60 TREE TRIMMING PERMIT REQUIRED.**

It shall be unlawful for any person, firm or corporation to cut, prune or trim any shade tree growing in, on or along any street, alley or public highway without first obtaining a written permit so to do, from the Street Commissioner of this city. The Street Commissioner shall have supervision of the work. ('66 Code, § 4-7-1-1) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 96.61 NORTH CAROLINA POPLARS PROHIBITED; REMOVAL.

(A) Whereas there are maintained and suffered to remain in the city, shade trees of the variety known as North Carolina poplars, and whereas the North Carolina poplar shade trees by their roots and leaves obstruct the sewers of the city, and thereby interfere with the proper sanitation of the city, the same are hereby declared to be a nuisance. ('66 Code, § 4-7-1-4)

(B) It shall be unlawful within the corporate limits of the city to plant or to suffer to remain standing shade trees of the variety commonly known as North Carolina poplars and it is hereby made the duty of all owners of real estate on which shade trees of the variety are now standing or being maintained and of all owners of real estate along the street border lines of whose property shade trees of the variety are now standing or being maintained, to remove the same. ('66 Code, § 4-7-1-5)

(C) Upon failure of property owners to comply with division (B) above, the city is hereby empowered to remove all shade trees of the variety commonly known as North Carolina poplars and to assess the cost of the removal against the real estate on which they are situated or on which they abut, and the assessment so made is hereby declared a lien upon the real estate to be collected as taxes are collected. ('66 Code, § 4-5-1-6)
(Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 96.62 HEDGE TRIMMING.

The owners of hedges situated on and along the streets, sidewalks, alleys and public highways of the city shall trim and keep the hedges trimmed to a height not to exceed five feet and to a width that no part of the hedge or hedges shall extend over any sidewalk, alley, street or public highway in the city or any portion thereof.
(‘66 Code, § 4-7-1-2) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 96.63 INSPECTIONS; OWNER’S RESPONSIBILITY.

It shall be the duty of the Street Commissioner of the city to inspect hedges along the sidewalks, alleys, streets and public highways of the city each year and wherever he finds hedges that are not trim

med to comply with § 96.62, he shall give the owner or owners thereof ten days notice to trim the same in a manner as to comply with § 96.62 and upon the failure or refusal of the owner or owners so to trim the hedge he shall proceed to trim the same and report the expense of the trimming thereof to the trimming thereof to the Clerk-Treasurer who shall cause the same to be made a lien against the real estate on which the hedge or hedges are situated, and to be collected as taxes are collected.
(‘66 Code, § 4-7-1-3) (Ord. 1172, passed 10-3-66)

TITLE IX: GENERAL REGULATIONS

Chapter

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91. ANIMALS

92. FAIR HOUSING

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CHAPTER 90: ABANDONED VEHICLES

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- 90.03 Declaration of nuisance
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- 90.05 Responsibility and liability of owner of abandoned vehicle or parts

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- 90.36 Sales by local units; deposit of proceeds; payment of public agency costs; appropriations
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GENERAL PROVISIONS**§ 90.01 SHORT TITLE.**

This chapter shall hereafter be known and cited as the “Abandoned Vehicle Ordinance.”

§ 90.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ABANDONED. When used in conjunction with the term vehicle, means:

- (1) Any vehicle located on public premises which does not have lawfully affixed thereto or displayed thereon a valid unexpired license plate and inspection sticker permitting its operation upon the highways of this state.
- (2) Any vehicle which is left on public premises continuously without being moved for a period of seven days.
- (3) Any vehicle located on public premises illegally or in such manner as to constitute a hazard or unreasonable obstruction to the movement of pedestrian or other vehicle traffic on a public right-of-way, street or highway.
- (4) Any vehicle that has remained on private premises without the consent of the owner or person in control of such premises, for more than 48 hours.
- (5) Any vehicle from which there has been removed the engine or transmission or differential or which is otherwise partially dismantled or inoperable and left on public premises.
- (6) Any vehicle from which there has been removed the engine or transmission or differential or which is otherwise partially dismantled or inoperable and left unattended for more than 180 days on private premises in a location visible from public premises and/or private premises at ground level.

(7) Any vehicle which has been removed by a towing service or a public agency upon request of an officer enforcing a provision of this code, statute or ordinance of the city other than this chapter, the violation of which may require the removal and impoundment of such motor vehicle and which motor vehicle once impounded is not claimed or redeemed by the owner or his agent within 30 days of its removal.

(8) A vehicle that is mechanically inoperable and is left on private property continuously in a location or locations visible from public property for more than 30 days.

AUTOMOBILE WRECKER. An automobile wrecking and parts business.

BUREAU. The Bureau of Motor Vehicles of the state.

COMMISSIONER. The Commissioner of the Bureau.

DISPOSAL AGENT. Any firm or individual engaged in business as a scrap metal processor or automobile wrecker.

OFFICER. A regular member of the Indiana State Police, a regular member of a city or town police department, a town marshal or town marshal deputy, a regular member of the county police force, or an individual of an agency designated by ordinance of the fiscal body.

OWNER. The last known record title holder to a vehicle according to the records of the Bureau under the provisions of I.C. 9-17.

PARTS. All component parts of a vehicle which are in a state of disassembly, or are assembled with other vehicle component parts, but which, in their state of assembly, do not constitute a complete vehicle.

PRIVATE PREMISES. All privately owned property which is not classified within the definition of public premises.

PUBLIC PREMISES. Any public right-of-way, street, highway, alley, park or other state, county or municipally owned property.

SCRAP METAL PROCESSOR. An establishment having facilities for processing iron, steel or nonferrous scrap and whose principal product is scrap iron and scrap steel or nonferrous scrap for sale.

TOWING SERVICE. A business organized for the purpose of moving or removing disabled motor vehicles, and, once removed, to store or impound such motor vehicles.

VEHICLE. Any motor vehicle, automobile, motorcycle, truck, trailer, semitrailer, truck tractor, bus, school bus, house car or motor bicycle.

(Ord. 1813, passed 8-8-95; Am. Ord. 1945, passed 6-5-2000)

§ 90.03 DECLARATION OF NUISANCE.

It shall be unlawful and is hereby declared a nuisance for any person to keep, park, store or permit to be kept, parked or stored an abandoned vehicle, as the same is hereinabove defined within the city limits.

§ 90.04 EXEMPTIONS.

The provisions of this chapter shall not apply to:

(A) Any vehicle in operable condition specifically adapted or constructed for operation on privately owned raceways;

(B) Any vehicle stored as the property of a member of the armed forces of the United States who is on active duty assignment;

(C) Any vehicle located on a vehicle sale lot, at a commercial vehicle servicing facility;

(D) A vehicle located upon property licensed or zoned as an automobile scrap yard.

(E) Any motor vehicle eligible for registration and licensing under I.C. 9-18-12-1 through 9-18-12-6 as an antique vehicle.

§ 90.05 RESPONSIBILITY AND LIABILITY OF OWNER OF ABANDONED VEHICLE OR PARTS.

The person who owns an abandoned vehicle or parts is:

(A) Responsible for the abandonment; and

(B) Liable for all of the costs incidental to the removal, storage, and disposal of the vehicle or the parts under this chapter.

ADMINISTRATIVE PROCEDURES

§ 90.15 DISCOVERY OF POSSESSION BY PERSON OTHER THAN VEHICLE OWNER.

When an officer discovers a vehicle in the possession of a person other than the owner of the vehicle and the person cannot establish the right to possession of the vehicle, the vehicle shall be taken to and stored in a suitable place determined by the officer.

(I.C. 9-22-1-5)

§ 90.16 NOTICE TO BUREAU OF VEHICLE DISCOVERED IN POSSESSION OF PERSON OTHER THAN OWNER; SEARCH; NOTICE TO BUYER.

The Bureau shall be notified within 72 hours of the location and description of a vehicle described in § 90.15.

§ 90.17 FAILURE OF OWNER OR LIENHOLDER TO APPEAR; INABILITY TO DETERMINE OWNERSHIP; DECLARING VEHICLE ABANDONED.

If the owner or lienholder under § 90.18 does not appear and pay all costs, or if the owner of a vehicle cannot be determined by a search conducted under § 90.29, the vehicle is considered abandoned and must be disposed of under this chapter.

(I.C. 9-22-1-7)

§ 90.18 RELEASE TO OWNER OR LIENHOLDER OF STORED VEHICLE.

If the properly identified person who owns or holds a lien on a vehicle appears at the site of storage before disposal of the vehicle or parts and pays all costs incurred against the vehicle or parts at that time, the vehicle or parts shall be released. A towing service shall notify the appropriate public agency of all releases under this section. The notification must include the name, signature, and address of the person that owns or holds a lien on the vehicle, a description of the vehicle or parts, costs, and the date of release.

(I.C. 9-22-1-8)

§ 90.19 RELEASE; CONTENTS; NOTICE BY TOWING OPERATORS.

The release must state the name, signature, and address of the person who owns or holds a lien on the vehicle, a description of the vehicle or parts, costs, and date of release. A towing service shall notify the appropriate public agency of all releases under § 90.18.

§ 90.20 [RESERVED].**§ 90.21 TAGGING ABANDONED VEHICLE OR PARTS.**

An officer who finds or is notified of a vehicle or parts believed to be abandoned shall attach in a prominent place a notice tag containing the following information:

(A) The date, time, officer's name, public agency, and address and telephone number to contact for information.

(B) That the vehicle or parts are considered abandoned.

(C) That the vehicle or parts will be removed after:

(1) Thirty-six hours, if the vehicle is located on or within the right-of-way of an interstate highway or any highway that is designated as part of the state highway system under I.C. 8-23-4; or

(2) Seventy-two hours, for any other vehicle.

(D) That the person who owns the vehicle will be held responsible for all costs incidental to the removal, storage, and disposal of the vehicle.

(E) That the person who owns the vehicle may avoid costs by removal of the vehicle or parts within 72 hours.

(1) Thirty-six hours, if the vehicle is located on or within the right-of-way of an interstate highway or any highway that is designated as part of the state highway system under I.C. 8-23-4; or

(2) Seventy-two hours, for any other vehicle.

(I.C. 9-22-1-11)

§ 90.22 OFFICER'S ABANDONED VEHICLE REPORT; PHOTOGRAPHS.

If a vehicle or a part tagged under § 90.21 is not removed within the applicable period, the officer shall prepare a written abandoned vehicle report of the vehicle or parts, including information on the condition and missing parts. Photographs may be taken to describe the condition of the vehicle or parts. (I.C. 9-22-1-12)

§ 90.23 VEHICLE OR PARTS VALUED AT LESS THAN FIVE HUNDRED DOLLARS; DISPOSAL; RETENTION BY BUREAU OF REPORT AND PHOTOGRAPHS.

If the vehicle is a junk vehicle and the market value of an abandoned vehicle or parts is less than \$1,000, the towing service shall immediately transfer the vehicle to a storage yard. A copy of the abandoned vehicle report and photographs, if applicable, relating to the abandoned vehicle shall be forwarded to the storage yard. A towing service or storage yard may dispose of an abandoned vehicle not less than 30 days after the date on which the towing service removed the abandoned vehicle. A city, county or town that operates a storage yard under I.C. 36-9-30-3, may dispose of an abandoned vehicle to an automobile scrap yard or an automotive salvage recycler upon removal of the abandoned vehicle. The public agency or storage yard disposing of the vehicle shall retain the original records and photographs for at least two years. If the vehicle is demolished, a copy of the abandoned vehicle report shall be forwarded to the Bureau by the automobile scrap yard after the vehicle has been demolished. (I.C. 9-22-1-13)

§ 90.24 VEHICLE OR PARTS VALUED AT FIVE HUNDRED DOLLARS OR MORE; DUTIES OF TAGGING OFFICER; TOW AND STORAGE OF VEHICLE OR PARTS.

If in the opinion of the officer the market value of the abandoned vehicle or parts is at least \$1,000, the officer, before placing a notice tag on the vehicle or parts, shall make a reasonable effort to ascertain the person who owns the vehicle or parts or who may be in control of the vehicle or parts. After 72 hours, the officer shall require the vehicle or parts to be towed to a storage yard or towing service. (I.C. 9-22-1-14)

§ 90.25 DISCOVERY OF VEHICLE ABANDONED ON RENTAL PROPERTY.

(A) A person who finds a vehicle believed to be abandoned on private property that the person owns or controls, including rental property, may:

- (1) Obtain the assistance of an officer under § 90.28 to have the vehicle removed; or
- (2) Personally arrange for the removal of the vehicle by complying with § 90.26(B).

(B) If the person wishes to personally arrange for the removal of the vehicle, the person shall attach in a prominent place a notice tag containing the following information:

- (1) The date, time, name, and address of the person who owns or controls the private property and a telephone number to contact for information.
- (2) That the vehicle is considered abandoned.

(3) That the vehicle will be removed after 72 hours.

(4) That the person who owns the vehicle will be held responsible for all costs incidental to the removal, storage, and disposal of the vehicle.

(5) That the person who owns the vehicle may avoid costs by removal of the vehicle or parts within 72 hours.

(I.C. 9-22-1-15)

§ 90.26 TOWING VEHICLE FROM RENTAL PROPERTY.

(A) If after 24 hours the person who owns a vehicle believed to be abandoned on private property has not removed the vehicle from the private property, the person who owns or controls the private property on which the vehicle is believed to be abandoned may have the vehicle towed from the private property.

(B) Notwithstanding division (A) above, in an emergency situation a vehicle believed to be abandoned on private property may be removed immediately. As used in this division, *EMERGENCY SITUATION* means that the presence of the vehicle believed to be abandoned interferes physically with the conduct of normal business operations of the person who owns or controls the private property or poses a threat to the safety or security of persons or property, or both.

(I.C. 9-22-1-16)

§ 90.27 NOTICE TO BUREAU GIVEN BY OPERATOR TOWING VEHICLE FROM RENTAL PROPERTY.

A towing service that tows a vehicle under § 90.26 shall give notice to the public agency that the abandoned vehicle is in the possession of the towing service.

(I.C. 9-22-1-17)

§ 90.28 COMPLAINT BY PERSON OWNING OR CONTROLLING PRIVATE PROPERTY.

Under complaint of a person who owns or controls private property that a vehicle has been left on the property for at least 48 hours without the consent of the person who owns or controls the property, an officer shall follow the procedures set forth in §§ 90.21 through 90.24.

(I.C. 9-22-1-18)

§ 90.29 ABANDONED VEHICLE REPORT; DESCRIPTION AND INFORMATION; NAME AND ADDRESS OF OWNER OR LIENHOLDER.

(A) Within 72 hours after removal of a vehicle to a storage yard or towing service under §§ 90.23, 90.24, 90.26 or 90.38 or I.C. 9-22-6, the public agency or towing service shall conduct a search of national data bases, including a data base of vehicle identification numbers, to attempt to obtain the last state of record of the vehicle in order to attempt to ascertain the name and address of the person who owns or holds a lien on the vehicle.

(B) A public agency or towing service that obtains the name and address of the owner of or lienholder on a vehicle shall, not later than 72 hours after obtaining the name and address, notify the person who owns or holds a lien on the vehicle of the following:

- (1) The name, address, and telephone number of the public agency or towing service;
- (2) That storage charges are being accrued and the vehicle is subject to sale if the vehicle is not claimed and the charges are not paid;
- (3) The earliest possible date and location of the public sale or auction;

The notice must be made by certified mail or a certificate of mailing or by means of an electronic service approved by the Bureau. Notwithstanding § 90.05, a public agency or towing service that fails to notify the owner of or lienholder on the vehicle as set forth in this section may not collect additional storage costs incurred after the date of receipt of the name and address obtained.
(I.C. 9-22-1-19)

§ 90.30 [RESERVED].

§ 90.31 MEANS OF VEHICLE IDENTIFICATION NOT AVAILABLE; DISPOSAL WITHOUT NOTICE.

If a vehicle or parts are in such a condition that vehicle identification numbers or other means of identification are not available to determine the person who owns or holds a lien on the vehicle, the vehicle may be disposed of without notice.
(I.C. 9-22-1-21)

§ 90.32 PUBLIC SALE BY BUREAU; NOTICE.

(A) This section applies to a unit or holder of a mechanics's lien under this chapter, including a towing service, city, town, or county.

(B) Except as provided in I.C. 9-22-1-23(c), if the person who owns or holds a lien upon a vehicle does not appear within 20 days after the mailing of a notice or the notification made by electronic service under § 90.29, the holder of a mechanic's lien may sell the vehicle or parts by either of the following methods.

(1) The holder of a mechanic's lien may sell the vehicle or parts to the highest bidder at a public sale or public auction. Notice of the sale or auction shall be given under I.C. 5-3-1, except that only one insertion in an appropriate publication one week before the public sale or auction is required.

(2) The city may sell the vehicle or part as unclaimed property under I.C. 36-1-11. The 20 day period for the property to remain unclaimed is sufficient for a sale under this division.
(I.C. 9-22-1-23(a) and (b))

§ 90.33 PURCHASERS AT PUBLIC SALES; BILL OF SALE; FEES; ROADWORTHINESS OF VEHICLE.

A person that purchases a vehicle under § 90.32 shall be furnished a bill of sale for each abandoned vehicle sold by the public agency upon paying the fee for a bill of sale imposed by the public agency. The fee may not exceed \$6 for each bill of sale. A person that purchases a vehicle under § 90.32 must:

(A) Present evidence from a law enforcement agency that the vehicle purchased is roadworthy, if applicable; and

(B) Comply with the applicable requirements under I.C. 9-17;

to obtain a certificate of title under for the vehicle.

(I.C. 9-22-1-24)

§ 90.34 PAYMENT OF REMOVAL, STORAGE AND DISPOSITION COSTS; COST LIMITS.

The costs for removal and storage of an abandoned vehicle or parts not claimed by the person who owns or holds a lien on a vehicle shall be paid from the abandoned vehicle account established under § 90.37. The charge payable by the person who owns or holds a lien on a vehicle for towing, storing, or removing an abandoned vehicle or parts may not exceed the limits established by ordinance adopted under § 90.37.

(I.C. 9-22-1-25)

§ 90.35 SALE PROCEEDS CREDITED AGAINST REMOVAL, STORAGE AND DISPOSITION COSTS.

The proceeds of sale of an abandoned vehicle or parts under § 90.32 shall be credited against the costs of the removal, storage, and disposal of the vehicle.
(I.C. 9-22-1-26)

§ 90.36 SALES BY LOCAL UNITS; DEPOSIT OF PROCEEDS; PAYMENT OF PUBLIC AGENCY COSTS; APPROPRIATIONS.

(A) This section applies to sales of abandoned vehicles or parts by a city, county or town.

(B) The proceeds from the sale of abandoned vehicles or parts, including:

(1) Charges for bills of sale; and

(2) Money received from persons who own or hold liens on vehicles for the cost of removal or storage of vehicles;

shall be deposited in the city's Abandoned Vehicle Fund by the fiscal officer of the city.

(C) The costs incurred by a public agency in administering this chapter shall be paid from the Abandoned Vehicle Fund.

(D) The fiscal body shall annually appropriate sufficient money to the fund to carry out this chapter. Money remaining in the fund at the end of a year remains in the fund and does not revert to the general fund.

(E) Notwithstanding division (D), the fiscal body of a consolidated city may transfer money from the fund.

(I.C. 9-22-1-27)

§ 90.37 FISCAL BODY PROCEDURES ESTABLISHED BY ORDINANCE; ABANDONED VEHICLE FUND.

(A) The fiscal body shall, by ordinance, establish procedures to carry out this chapter, including the following:

(1) The charges allowed for towing and storage of abandoned vehicles, which shall be filed with the Bureau.

(2) The means of disposition of vehicles.

(B) The fiscal body shall establish an abandoned vehicle fund for the purposes of this chapter.
(I.C. 9-22-1-30)

**§ 90.38 PUBLIC AGENCIES; PERSONNEL, PROPERTY AND TOWING CONTRACTS;
FISCAL BODY ORDINANCES.**

To facilitate the removal of abandoned vehicles or parts, a public agency may:

- (A) Employ personnel;
- (B) Acquire equipment, property, and facilities; and
- (C) Enter into towing contracts;

for the removal, storage, and disposition of abandoned vehicles and parts. The fiscal body may, by ordinance, establish procedures to carry out this section.
(I.C. 9-22-1-31)

§ 90.39 LIABILITY FOR LOSS OR DAMAGE TO VEHICLE OR VEHICLE PARTS.

The following are not liable for loss or damage to a vehicle or parts occurring during the removal, storage, or disposition of a vehicle or parts under this chapter:

- (A) A person who owns, leases, or occupies property from which an abandoned vehicle or parts are removed.
- (B) A public agency.
- (C) A towing service.
- (D) An automobile scrap yard.
- (E) A storage yard.

(I.C. 9-22-1-32)

CHAPTER 91: ANIMALS

Section

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- 91.04 Licensing fees
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- 91.07 Rabid animals; vaccination and other requirements
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GENERAL PROVISIONS

§ 91.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ANIMAL. Any live, non-human vertebrate creature, domestic or wild.

ANIMAL CONTROL OFFICER. The person employed by the city whose duties shall include, among others, the enforcement of the provisions included in this chapter.

ANIMAL SHELTER. The premises owned by the city for the purpose of caring for animals which are at large, lost or otherwise homeless.

AT LARGE. Any animal shall be deemed **AT LARGE** when it is not under restraint.

ATTACK. Any behavior by an animal that constitutes an immediate and serious physical threat to human beings or other animals, whether or not such behavior results in injury to such human beings or other animals. This behavior includes, but is not limited to, snapping at, lunging at, and/or attempting to bite human beings or animals.

HARBORING. The actions of any person which permit any animal habitually to remain, lodge or to be fed within his home, store, enclosure, yard or place of business or any premises on which a person resides or controls, shall be considered **HARBORING** an animal. An animal shall be presumed harbored if it is fed or sheltered for three consecutive days.

HUMANE SOCIETY. Any organization for the prevention of cruelty to animals incorporated under the laws of the state.

KENNEL. An establishment or residence wherein any person engages in boarding, breeding, buying, letting for hire, training for a fee or selling more than two dogs and/or cats.

OWNER. Any person, partnership or corporation owning, keeping or harboring one or more animals. An **OWNER** must provide shelter from weather for dogs and cats.

PERSON. Any individual, firm, association, joint stock company, syndicate, partnership or corporation.

PET. Any animal kept for pleasure rather than utility.

PUBLIC NUISANCE. Any animal(s) which:

- (1) Molests passers-by or passing vehicles;
- (2) Attacks other animals;
- (3) Is repeatedly at large;
- (4) Damages, leaves fecal matter on public or private property;

(5) Barks, whines or howls in an excessive or continuous fashion.

RESTRAINT. Any animal secured by a leash and lead within the real property limits of its owner. Any animals not physically confined to the owner's property shall be presumed not to be under **RESTRAINT**.

STRAY. Any animal which doesn't appear, upon reasonable inquiry, to have an owner.

TEMPERATURE CONTROLLED FACILITY. Must be brought into a temperature controlled facility when the temperature is at or below 20°F or at or above 90°F, or when a heat advisory, wind chill warning, or tornado warning has been issued by local, state, or national authority, except when the dog or cat is in visual range of a competent adult who is outside with the dog.

TIME LIMIT WITH ANIMAL SHELTER.

(1) Dogs or cats without tags will be kept at the shelter for three days.

(2) Dogs or cats with tags will be kept for five days. Every effort to contact the owner will be made. When an animal control officer is called to pick up dogs or cats on private property, the property owner must sign a release form to have the animal picked up.

VETERINARY HOSPITAL. Any establishment maintained and operated by a veterinarian for surgery, diagnosis and treatment of diseases and injuries of animals.

VICIOUS ANIMALS. Any animal that, by its behavior, constitutes an immediate and serious physical threat to human beings or animals.

WILD ANIMALS. Any animal not a domestic animal, with the exception of small, non-poisonous aquatic or amphibious animals and small cage birds.
(‘66 Code, § 4-10-1-1) (Ord. 1400, passed 11-13-95; Am. Ord. 1400, passed 4-6-09; Am. Ord. 2172, passed 5-6-13; Am. Ord. 2292, passed 3-5-18)

§ 91.02 ANIMAL CONTROL OFFICER; ENFORCEMENT.

(A) The office of Animal Control Officer is herewith created. The Animal Control Officer shall be appointed by the Mayor and shall carry out and supervise the enforcement of this chapter. The office shall be within the Elwood Police Department, and the salary shall be fixed by the Mayor and approved by the Common Council. (‘66 Code, § 4-10-1-2)

(B) The provisions of this chapter shall be enforced by the Animal Control Officer and appropriate law enforcement agencies. (‘66 Code, § 4-10-1-21)
(Ord. 1400, passed 11-13-95; Am. Ord. 2172, passed 5-6-13; Am. Ord. 2292, passed 3-5-18)

§ 91.03 LICENSING REQUIREMENTS.

(A) Any person owning, keeping, harboring or having custody of any dog or cat over six months of age within the municipality must obtain a license as herein provided. ('66 Code, § 4-10-1-3)

(B) Applications for a license shall be made to the Elwood Animal Shelter. The application, one per animal, shall include the name and address of the applicant(s), a description of the animal, the appropriate fee, a rabies certificate and a leptospirosis certificate issued from a veterinarian. Application for a license must be made when the animal reaches the age of six months. The license must be applied for within 20 days of acquisition. If not revoked, licenses for the keeping of all animals shall be for one year and must be purchased on or before May 30 of each year. License fees shall not be required for service animals. ('66 Code, § 4-10-1-4)

(Ord. 1400, passed 11-13-95; Am. Ord. 2172, passed 5-6-13; Am. Ord. 2292, passed 3-5-18) Penalty, see § 91.99

§ 91.04 LICENSING FEES.

(A) A license shall be issued only after payment of the applicable fees and the receipt of all application materials. Fees shall be as follows:

Type of Animal	License Fee Per Animal
Neutered or spayed (dog or cat)	\$10 each
Intact (dog or cat)	\$20 each

(B) A duplicate license may be obtained for a fee of \$1. If an animal is neutered or spayed after the license fee has been paid, a refund of 50% of the original license fee can be obtained from the Animal Control Officer upon presentation of a veterinarian's written statement. The owner of any animal deemed by a veterinarian to be unfit to undergo a spaying or neutering operation shall be, upon presentation of a written statement by the veterinarian, charged the fee for spayed or neutered animals. No person shall use any license for any animal other than the animal for which it was issued.

('66 Code, § 4-10-1-6) (Ord. 1400, passed 11-13-95; Am. Ord. 2172, passed 5-6-13; Am. Ord. 2292, passed 3-5-18)

§ 91.05 TAGS AND IDENTIFICATION COLLARS.

Upon acceptance of the license application and fee, the Elwood Animal Shelter shall issue durable tags or identification collars, stamped with an identifying number and the date of issuance. Animals must

wear tags at all times when off the premises of the owner. The licensing agent shall maintain a record of the identifying number of all tags issued.

('66 Code, § 4-10-1-5) (Ord. 1400, passed 11-13-95; Am. Ord. 2172, passed 5-6-13; Am. Ord. 2292, passed 3-5-18)

§ 91.06 REVOCATION OF LICENSE.

(A) The Animal Control Officer may revoke any license if the person holding a license refuses or fails to comply with any part of this chapter. The Animal Control Officer shall provide a ten-day notice to the owner prior to revoking the license, after which time the license shall be revoked and the animal(s) owned, kept or harbored by a person shall be rehomed by either the person himself or the Animal Control Officer, and no part of the license fee shall be refunded.

(B) If the person refuses to dispose of the animal(s), the Animal Control Officer shall do so and the cost of rehoming shall be borne by the person in offense. If the applicant has withheld or falsified any information on the application, the Animal Control Officer shall refuse to issue a license. No person who has been convicted of cruelty to animals shall be issued a license.

('66 Code, § 4-10-1-7) (Ord. 1400, passed 11-13-95; Am. Ord. 2172, passed 5-6-13; Am. Ord. 2292, passed 3-5-18)

§ 91.07 RABID ANIMALS; VACCINATION AND OTHER REQUIREMENTS.

(A) In the case of a dog, I.C. 35-46-3-1 shall be incorporated and enforced by appropriate state action. In the case of a cat, it shall be unlawful to own or harbor a cat over the age of six months without a valid rabies vaccination. ('66 Code, § 4-10-1-12)

(B) If an animal has bitten a person, the animal shall be impounded in the Elwood Animal Shelter at the expense of the owner for a period determined by the Animal Control Officer in order to determine whether or not the animal has rabies. If the animal dies during the period, it shall, at the owner's expense, be sent to the proper authorities to determine whether or not it was rabid. ('66 Code, § 4-10-1-13)

(C) Any animal which has been bitten by an animal known to have rabies shall be confined for a period of six months at the owner's expense or be destroyed. ('66 Code, § 4-10-1-14)

(D) It is unlawful for any owner knowing or suspecting an animal to have rabies or leptospirosis to allow an animal to leave his premises, except to be taken to the Elwood Animal Shelter. Every owner, upon ascertaining an animal is rabid, shall immediately notify the Animal Control Officer. ('66 Code, § 4-10-1-15)

(E) It is unlawful for a person to knowingly or intentionally harbor a dog or cat that is over the age of six months and is not immunized against rabies. (I.C. 35-46-3-1). (Ord. 1400, passed 11-13-95; Am. Ord. 1400, passed 4-6-09; Am. Ord. 2172, passed 5-6-13; Am. Ord. 2292, passed 3-5-18) Penalty, see § 91.99

§ 91.08 LIVESTOCK AND EXOTIC ANIMALS.

(A) Except as provided in subsection (C) below, no person shall have or keep any goat, sheep, pig, hog or other swine, horse, mule, pony, cattle, rabbit, chicken, duck, goose, turkey, guinea, or any other species of livestock, farm animal or fowl, including but not limited to any llama or ostrich, within the city limits. No person shall present or have in a public place or a place of public resort, any reptile or amphibian unless securely contained in a cage or similar device.

(B) Any poisonous or venomous animal, reptile or insect must be registered with the Elwood City Police Department. No fee is required. A penalty of \$25 per animal per incident will be assessed for non-compliance or failure to register the animal, reptile or insect. An owner or occupant of the premises where a poisonous or venomous animal, reptile or insect is kept shall post a sign on the front door which shall be provided upon registration and shall state "Warning: Poisonous or venomous animal, reptile or insect".

(C) Female chickens may be kept within the City of Elwood in residential districts only provided that all of the following conditions are met:

(1) No more than six female chickens may be kept per city parcel.

(2) A chicken shelter, the sufficiency of which must be approved by the City of Elwood Planning Department or Animal Control Officer, must be maintained by the owner of female chickens.

(3) Prospective owners of female chickens must pay an annual fee of \$5 per female chicken, not to exceed \$30, to defray the costs of the Animal Control Officer or Planning Department's inspection of the chicken shelter.

(4) Chicken shelters must be located no less than five feet from adjacent land owners real property and also be located at least 25 feet from homes owned by adjacent landowners.

(5) Female chickens must be kept enclosed from sunset until sunrise each evening.

(6) Male chickens, i.e. roosters, are strictly forbidden from the city pursuant to § 91.08(A). (Ord. 1400, passed 11-13-95; Am. Ord. 1400, passed 8-6-07; Am. Ord. 1400, passed 2-6-17; Am. Ord. 2292, passed 3-5-18) Penalty, see § 91.99

§ 91.09 RESTRAINING ANIMALS; IMPOUNDMENT PROCEDURES.

All animals shall be kept under restraint. No owner shall fail to exercise due care and control of his or her animals to prevent them from becoming a public nuisance. Every female animal in heat shall be confined in a building or secured enclosure in a manner that the female animals cannot come into contact with another animal or the same species except for planned breeding. Every vicious animal, as determined by the Animal Control Officer, shall be confined by the owner within a building or secured enclosure shall be securely muzzled or caged whenever of the premises of the owner. Unrestrained and nuisance animals shall be taken by the police or Animal Control Officer and impounded in the Elwood Animal Shelter, and there confined in a humane manner. If by a license tag or other means, the owner of an impounded animal can be identified, the Animal Control Officer shall immediately, upon impoundment, notify the owner by telephone or mail. An owner re-claiming an impounded dog or cat shall pay a \$10 per day boarding fee for each overnight stay impounded, plus a fine of \$25 for the first offense, \$50 for the second offense and \$100 for the third offense (plus a citation for public nuisance) and the fourth offense will result in surrender of the animal to the city and placement for adoption. Any animal not re-claimed by its owner within five working days shall become the property of the local government authority and shall be placed for adoption in a suitable home or humane euthanasia. An owner may surrender an animal to the city for a fee of \$25.

('66 Code, § 4-10-1-8) (Ord. 1400, passed 3-1-76; Am. Ord. passed 6-1-92; Am. Ord. passed 11-13-95; Am. Ord. passed 8-6-07; Am. Ord. passed 12-3-07; Am. Ord. 1400, passed 5-8-08; Am. Ord. 2172, passed 5-6-13; Am. Ord. 2292, passed 3-5-18) Penalty, see § 91.99

§ 91.10 POISONING ANIMALS.

No person shall expose any known poisonous substance, whether mixed with food or not, so that the same shall be liable to be eaten by an animal, provided that it shall not be unlawful for a person to expose on his own property, common rat or mouse poison mixed only with vegetable substances or unmixed.

('66 Code, § 4-10-1-11) (Ord. 1400, passed 11-13-95; Am. Ord. 2292, passed 3-5-18) Penalty, see § 91.99

§ 91.11 GIVING ANIMALS AS PRIZES.

No person shall give away any live animal, fish, reptile or bird as a prize for, as an inducement to enter any contest, game or other competition, as an inducement to enter a place of amusement or offer the vertebrate as an incentive to enter into any business agreement whereby the offer was for the purpose of attracting trade.

('66 Code, § 4-10-1-9) (Ord. 1400, passed 11-13-95; Am. Ord. 2292, passed 3-5-18) Penalty, see § 91.99

§ 91.12 MOTOR VEHICLES ACCIDENTS INVOLVING ANIMALS.

Any person who, as the operator of a motor vehicle, strikes an animal shall stop at once and immediately report the injury or death to the animal's owner. In the event the owner cannot be ascertained or located, the operator shall at once report the accident to the appropriate law enforcement agency or to the Animal Control Officer.

('66 Code, § 4-10-1-10) (Ord. 1400, passed 11-13-95; Am. Ord. 2172, passed 5-6-13; Am. Ord. 2292, passed 3-5-18)

§ 91.13 ADOPTION OF ANIMALS.

The Animal Control Officer, with the approval of the Common Council, may promulgate policies and regulations for the adoption of animals from the Elwood Animal Shelter.

('66 Code, § 4-10-1-16) (Ord. 1400, passed 11-13-95; Am. Ord. 2172, passed 5-6-13; Am. Ord. 2292, passed 3-5-18)

§ 91.14 DISPOSITION OF FUNDS.

All fees or monies collected shall be paid to the Clerk-Treasurer or Animal Control Officer. Money so paid shall be transmitted to the Clerk-Treasurer, shall be placed in a special fund and shall be used in carrying out the provisions of this chapter.

('66 Code, § 4-10-1-20) (Ord. 1400, passed 11-13-95; Am. Ord. 2172, passed 5-6-13; Am. Ord. 2292, passed 3-5-18)

§ 91.15 OWNER RESPONSIBILITY FOR ANIMAL ATTACKS.

(A) It shall be unlawful for an owner or keeper of an animal to allow that animal to attack or injure a person who did not provoke the animal prior to the attack.

(B) Owners of a rental property may be responsible for any animal harbored on their property. In the event a problem arises with a tenant in the enforcement of this section, the owner of the rental property shall assist the city in the enforcement. If the property owner fails to assist with the enforcement of this section, (he property owner may become responsible and cited into court in accordance with the provisions of this section.

(C) It shall be a defense to prosecution under this section if:

(1) The attack occurred in an enclosure in which the animal was confined without means of escape, there was posted at the main entrance of the enclosure a notice to beware of the animal and the person attacked entered the enclosure without invitation; or

(2) The person was attacked during the commission or attempted commission of a criminal act on the property of the owner or keeper of the animal.

(D) The liability imposed by this section shall not reduce, substitute for or in any manner be deemed to be in derogation of the rights accorded victims of dog bite injury or property damages as provided for in I.C. 15-5-12 *et seq.*, any successor statutes or by common law.

(Ord. 1400 passed 8-6-07; Am. Ord. 1400, passed 12-3-07; Am. Ord. 1400, passed 4-6-09; Am. Ord. 2292, passed 3-5-18) Penalty, see § 91.99

§ 91.16 FEE FOR SURRENDER OF ANIMAL.

An owner surrendering an animal to the city will be assessed a fee of \$25 per animal surrendered. (Ord. 1400, passed 4-6-09; Am. Ord. 2292, passed 3-5-18)

§ 91.17 ABANDONED OR NEGLECTED ANIMAL.

It is unlawful for a person who owns a dog or cat to recklessly, knowingly, or intentionally abandon or neglect such animal. (I.C. 35-46-3-7).

(Ord. 1400, passed 4-6-09; Am. Ord. 2292, passed 3-5-18) Penalty, see § 91.99

§ 91.18 TEMPERATURE CONTROLLED FACILITY.

Must be brought into a temperature controlled facility when the temperature is at or below 20°F or at or above 90°F, or when a heat advisory, wind chill warning, or tornado warning has been issued by local, state, or national authority, except when the dog or cat is in visual range of a competent adult who is outside with the dog.

(Ord. 2292, passed 3-5-18)

KENNELS

§ 91.25 PERMITS REQUIRED; PROCEDURE.

(A) No person shall operate a kennel without first obtaining a permit in compliance with this chapter. Each facility regulated by this chapter shall be considered a separate enterprise and shall require an individual permit. ('66 Code, § 4-10-1-17)

(B) The applicant must apply to the Zoning Board of Appeals for a special exception to operate kennels on their property. The applicants must meet all of the requirements for a kennel. Then the applicant must submit a full set of prints showing kennel sites, construction of kennels and location of kennels on site plans for approval of the Zoning Board.

(C) After the kennel is approved by the Zoning Board then the applicant must submit the approved form to the Clerk-Treasurer for the proper kennel license. The licenses are good for the calendar year in which they are written for the person or persons receiving approval and must be renewed by January 31 of the following year. The special exception is good for the person or persons to whom it is written only and change of ownership requires a new kennel license. ('66 Code, § 4-10-1-18) (Ord. 1400, passed 11-13-95; Am. Ord. 2292, passed 3-5-18) Penalty, see § 91.99

§ 91.26 PERMIT FEES.

(A) Kennel permit fees are as follows:

Number of accommodated animals	Fees per permit
For each kennel authorized to accommodate 15 animals	\$100
For each kennel authorized to accommodate 15 to 50 animals	\$150
For each kennel authorized to accommodate more than 50 animals	\$200

(B) No fee shall be required of any veterinary hospital, animal shelter or government-operated zoological park or laboratory. ('66 Code, § 4-10-1-19) (Ord. 1400, passed 11-13-95; Am. Ord. 2292, passed 3-5-18)

§ 91.27 KENNEL REQUIREMENTS.

(A) All kennels will be kept in a sanitary condition. Dog runs will be hard-surfaced for easy cleaning. All animals will be separated except for mating or tending young.

(B) Kennels with less than 15 animals over the age of four months shall be separated from nearest residences or business by not less than 200 feet.

(C) Kennel with over 15 but less than 50 animals shall be separated from nearest residence or business by not less than 300 feet.

(D) Kennel with over 50 animals shall be separated from nearest residence or business by not less than 400 feet.

('66 Code, § 4-10-1-17) (Ord. 1400, passed 11-13-95; Am. Ord. 2292, passed 3-5-18) Penalty, see § 91.99

§ 91.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99.

(B) A person who violates any provision of § 91.15 shall be subject to a fine for any such violation of not less than \$500. If the violation results in the animal causing serious bodily injury to any person, the court, upon request, shall order the animal forfeited and/or destroyed.

(C) A person who violates any provision of § 91.18 shall be subject to a fine for any such violation of not less than \$25 for the first offense and no less than \$200 for the second or subsequent violations, (Ord. 1400, passed 11-13-95; Am. Ord. 1400 passed 8-6-07; Am. Ord. 1400, passed 12-3-07; Am. Ord. 2292, passed 3-5-18)

CHAPTER 92: FAIR HOUSING

Section

- 92.01 Policy
- 92.02 Definitions
- 92.03 Unlawful practice
- 92.04 Discrimination in sales or rentals
- 92.05 Discrimination; qualifications and standards
- 92.06 Discrimination in real estate transactions
- 92.07 Discrimination in brokerage services
- 92.08 Interference, coercion and intimidation
- 92.09 Prevention of intimidation; fine
- 92.10 Exemptions
- 92.11 Administrative enforcement

§ 92.01 POLICY.

It shall be the policy of the city to provide, within constitutional limitation, for fair housing throughout its corporate limits as provided for under the federal *Civil Rights Act of 1968*, as amended, the federal *Housing and Community Development Act of 1974*, as amended, and I.C. 22-9.5-1 *et seq.* (Ord. 1777, passed 6-7-93)

§ 92.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AGGRIEVED PERSON. Includes any person who:

(1) Claims to have been injured by a discriminatory housing practice; or

(2) Believes that the person will be injured by a discriminatory housing practice that is about to occur.

(I.C. 22-9.5-2-2)

COMMISSION. Indiana Civil Rights Commission created pursuant to I.C. 22-9.1-4 *et seq.* (I.C. 22-9.5-2-3)

COMPLAINT. A written grievance filed with the city either by a complainant or another party, which meets all the requirements of § 92.11 (B) and (C).

COMPLAINANT. A person, including the Commission, who files a complaint under I.C. 22-9.5-6. (I.C. 22-9.5-2-4)

COVERED MULTI-FAMILY DWELLINGS.

- (1) Buildings consisting of four or more units if the buildings have one or more elevators; and
- (2) Ground-floor units in other buildings consisting of four or more units.

DISABILITY.

- (1) With respect to a person:

(a) A physical or mental impairment which substantially limits one or more of the person's major life activities;

(b) A record of having such an impairment;

(c) An impairment described or defined pursuant to the federal *Americans with Disabilities Act of 1990*;

(d) Any other impairment defined under I.C. 29-9.5-2-10.

(2) **DISABILITY** shall not include current illegal use of or addiction to a controlled substance, as defined in Section 802 of USC Title 21 (I.C. 22-9.5-2-10 (b)), or psychoactive substance use disorders resulting from current illegal use of drugs;

- (3) An individual shall not be considered disabled solely on the basis of the following:

(a) Homosexuality;

(b) Bisexuality;

(c) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments or other sexual behavior disorders; or (I.C. 22-9.5-2-10 (c))

(d) Compulsive gambling, kleptomania or pyromania.

DISCRIMINATORY HOUSING PRACTICE. An act that is unlawful under §§ 92.04, 92.05, 92.06, 92.07 and 92.08 of this chapter or I.C. 22-9.5-5.

DWELLING. Any:

(1) Building, structure or part of a building or structure that is occupied as, or designed or intended for occupancy as, a residence by one or more families; or

(2) Vacant land which is offered for sale or lease for the construction or location of a building, structure or part of a building or structure that is occupied as, or designed or intended for occupancy as a residence by one or more families.

(I.C. 22-9.5-2-8)

FAMILY. Includes a single (I.C. 22-9.5-2-9) with the status of the family being further defined below. Also pursuant to 24 C.F.R. Part 5, the definition of **FAMILY** is revised to include families regardless of actual or perceived sexual orientation, gender identity or marital status of its members.

FAMILIAL STATUS. One or more individuals who have not attained the age of 18 years being domiciled with:

(1) A parent or another person having legal custody of an individual or the written permission of the parent or other person; or

(2) The protection afforded against discrimination on this basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

OWNER. The person holding legal or equitable title to property or his or her legal representative.

OWNER OCCUPIED. Any individual who:

(1) Is a title holder of record or contract purchaser of the real property in question; and

(2) Continued to occupy and reside in the property as his principal dwelling place at the time the alleged discriminatory act occurs.

PERSON. Includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, non-incorporated organizations, trustees, trustees in cases under USC Title 11, receivers and fiduciaries. (I.C. 22-9.5-2-11)

TO RENT. Includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy the premises owned by the occupant. (I.C. 22-9.5-2-13)

(Ord. 1777, passed 6-7-93; Am. Ord. 2147, passed 8-6-12)

Editor's Note:

I.C. 22-9.5-2-10(b) and I.C. 22-9.5-10(c) are repealed by 2007 Public Law 99, Section 224.

§ 92.03 UNLAWFUL PRACTICE.

(A) Subject to the provisions of division (B) below, § 92.10 of this chapter and I.C. 22-9.5-3, the prohibitions against discrimination in the sale or rental of housing set forth in I.C. 22-9.5-5-1 and in §§ 92.04 and 92.05 of this chapter shall apply to all dwellings except as exempted by division (B) below and I.C. 22-9.5-3.

(B) Other than the provisions of division (C) below, nothing in §§ 92.04 and 92.05 shall apply to:

(1) Any single-family house sold or rented by an owner where the private individual owner does not own more than three single-family houses at any one time, provided that in the sale of a single-family house by a private individual owner not residing in the house at the time of sale or who was not the most recent resident of the house prior to the sale, the exemption shall apply only to one sale within any 24-month period. The private individual owner may not own any interest in, nor have owned or reserved on his behalf, title to or any right to all or a portion of the proceeds from the sale or rental of three or more single-family houses at any one time.

(2) The sale or rental of any single-family house shall be excepted from application of this section only if the house is sold or rented.

(a) Without the use in any manner of the sales or rental facilities or services of any real estate broker, agent or salesman, or any person in the business of selling or renting dwellings, or of any employee or agent of any broker, agent, salesman or person; and

(b) Without the publication, posting or mailing, after notice of advertisement or written notice in violation of § 92.04 (C) of this chapter. Nothing in this provision shall prohibit the use of attorneys, escrow agents, abstracters, title companies and other professional assistance as necessary to perfect or transfer this title.

(3) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of the living quarters as his residence.

(C) For the purposes of division (B), a person shall be deemed to be in the business of selling or renting dwellings if:

(1) He has, within the preceding 12 months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;

(2) He has, within the preceding 12 months, participated as agent, other than in the sale of his own personal residence, in providing sales or rental facilities or services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or

(3) He is the owner of any dwelling unit designed or intended for occupancy by, or occupied by, five or more families.
(Ord. 1777, passed 6-7-93)

§ 92.04 DISCRIMINATION IN SALES OR RENTALS.

As made applicable by § 92.03 and except as exempted by §§ 92.03 (B) and 92.10, it shall be unlawful:

(A) To refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex familial status or national origin;

(B) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith because of race, color, religion, sex, familial status or national origin;

(C) To make, print or publish, or cause to be made, printed or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, sex, disability, familial status or national origin or an intention to make any preference, limitation or discrimination;

(D) To represent to any person because of race, color, religion, sex, disability, familial status or national origin that any dwelling is not available for inspection, sale or rental when the dwelling is in fact so available;

(E) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or perspective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, disability, familial status or national origin;

(F) (1) To discriminate in the sale or rental or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of:

(a) That buyer or renter;

(b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(c) Any person with that person.

(2) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with the dwelling, because of a disability of:

(a) That buyer or renter;

(b) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(c) Any person with that person.

(Ord. 1777, passed 6-7-93)

§ 92.05 DISCRIMINATION; QUALIFICATIONS AND STANDARDS.

(A) For purposes of this section, discrimination includes:

(1) A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by a person if the modifications may be necessary to afford the person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(2) A refusal to make reasonable accommodations in rules, policies, practices or services, when accommodations may be necessary to afford the person equal opportunity to use and enjoy a dwelling; or

(3) In connection with the design and construction of covered multi-family dwellings for first occupancy after the date that is 30 months after September 13, 1988, a failure to design and construct those dwellings in such a manner that:

(a) The public and common use portions of the dwellings are readily accessible to and usable by disabled persons;

(b) All doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and

(c) All premises within the dwellings contain the following features of adaptive design:

1. An accessible route into and through the dwelling;

2. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;

3. Reinforcements in bathroom walls to allow later installation of grab bars; and

4. Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(d) Compliance with the appropriate requirements of the *Americans With Disabilities Act of 1990* and of the American National Standard for buildings and facilities providing accessibility and usability for physically disabled people (commonly cited as “ANSI A117.1”) suffices to satisfy the requirements of division (A)(3)(c).

(B) Nothing in this section requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(Ord. 1777, passed 6-7-93)

§ 92.06 DISCRIMINATION IN REAL ESTATE TRANSACTIONS.

(A) It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of a transaction, because of race, color, religion, sex, disability, familial status or national origin.

(B) As used in this section, the phrase “residential real estate-related transaction” means any of the following:

- (1) The making or purchasing of loans or providing other financial assistance:
 - (a) For purchasing, constructing, improving, repairing or maintaining a dwelling; or
 - (b) Secured by residential real estate.
- (2) The selling, brokering or appraising of residential real property.

(C) Nothing in this chapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, disability or familial status.

(Ord. 1777, passed 6-7-93)

§ 92.07 DISCRIMINATION IN BROKERAGE SERVICES.

It shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers’ organization or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of access, membership, or participation, on account of race, color, religion, sex, disability, familial status or national origin.

(Ord. 1777, passed 6-7-93)

§ 92.08 INTERFERENCE, COERCION AND INTIMIDATION.

It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, on account of his having exercised or enjoyed or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by §§ 92.03, 92.04, 92.05, 92.06 and 92.07.

(Ord. 1777, passed 6-7-93)

§ 92.09 PREVENTION OF INTIMIDATION; FINE.

Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with or attempts to injure, intimidate or interfere with:

(A) Any person because of his race, color, religion, sex, disability, familial status or national origin and because he is or has been selling, purchasing, renting, financing, occupying, contracting or negotiating for the sale, purchase, renting, financing or occupation of any dwelling or applying for or participating in any service, organization or facility relating to the business of selling or renting dwellings; or

(B) Any person because he is or has been or in order to intimidate the person or any other person or class of person from:

(1) Participating, without discrimination on account of race, color, religion, sex, disability, familial status or national origin, in any of the activities, services, organizations or facilities described in division (A); or

(2) Affording another person or class of persons opportunity or protection so to participate.

(C) Any citizen, because he is, has been or in order to discourage the citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, disability, familial status, or national origin, in any of the activities, services, organizations or facilities described in division (A), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to participate shall be fined not more than \$1,000 or if bodily injury results shall be fined not more than \$2,500.

(Ord. 1777, passed 6-7-93)

§ 92.10 EXEMPTIONS.

(A) Exemptions defined or set forth under I.C. 22-9.5-3 *et seq.*, shall be exempt from the provisions of this chapter to include those activities or organizations set forth under divisions (B) and (C) of this section.

(B) Nothing in this chapter shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to membership in the religion restricted on account of race, color or national origin. Nor shall anything in this chapter prohibit a private club not in fact open to the public, which has an incident to its primary purpose or purposes from limiting the rental or occupancy of the lodgings to its members or from giving preference to its members.

(C) (1) Nothing in this chapter regarding familial status shall apply with respect to housing for older persons.

(2) As used in this section, the phrase “housing for older persons” means housing:

(a) Provided under any state or federal program that the Secretary of the Federal Department of Housing and Urban Development or the state Civil Rights Commission determines is specifically designed and operated to assist elderly persons (as defined in the state or federal program);

(b) Intended for, and solely occupied by, persons 62 years of age or older; or

(c) Intended and operated for occupancy by at least one person 55 years of age or older per unit.

(3) Housing that includes units that are unoccupied or that are occupied by persons who do not meet the age requirement of divisions (B) or (C) does not fail to meet the requirements for housing older persons if:

(a) The unoccupied units are reserved for persons who meet the age requirements of divisions (B) or (C); or

(b) The occupants who do not meet the age requirements of divisions (b) and (c) above have resided in the housing since September 12, 1988, or an earlier date and the persons who become occupants after September 13, 1988, meet the age requirements of divisions (b) and (c) above.

(4) The city shall adopt rules under I.C. 4-22-2 to establish criteria for matching determinations under division (2) above. These rules must include at least the following provisions:

(a) Except as provided in division (b) below, the housing must provide significant facilities and services specifically designed to meet the physical or social needs of older persons.

(b) If the provision of the facilities and services described in division (a) above is not practicable, the housing must be necessary to provide important housing opportunities for older persons.

(c) At least 80% of the units must be occupied by at least one person who is at least 55 years of age.

(d) The owner or manager of the housing must publish and adhere to provide housing for persons who are at least 55 years of age.
(Ord. 1777, passed 6-7-93)

§ 92.11 ADMINISTRATIVE ENFORCEMENT.

(A) The authority and responsibility for properly administering this chapter and referral of complaints hereunder to the Indiana Civil Rights Commission as set forth in division (C) hereof shall be vested in the chief executive officer of the city.

(B) A complaint concerning an alleged discriminatory housing practice must be in writing, under oath and addressed to the Mayor.

(C) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, whichever is later, file a complaint with the Commission (as delineated in division (D) below alleging the discriminatory housing practice.

(D) Notwithstanding the provisions of I.C. 22-9.5-4-8, the city, because of a lack of financial and other resources necessary to fully administer enforcement proceedings and possible civil actions under this chapter, herein elects to refer all formal complaints of violation of the sections of this chapter by complainants to the Indiana Civil Rights Commission for administrative enforcement actions pursuant to I.C. 22-9.5-6. The chief elected officer of the city shall refer all the complaints to the Commission, as provided for under division (A) of this section, for purposes of investigation, resolution and appropriate relief as provided for under I.C. 22-9.5-6.

(E) Not later than one year after an alleged discriminatory housing practice has occurred or terminated, whichever is later, the Commission may file its own complaint.

(F) A complaint under this section may be amended at any time.

(G) When a complaint is filed under this section, the city shall do the following:

(1) Give the aggrieved person notice that the complaint has been received;

(2) Advise the aggrieved person of the time limit and choice of forums under this section;

(3) The chief executive officer of the city or his or her designee shall provide information on remedies available to any aggrieved person or complainant requesting information;

(4) Not later than 20 days after filing the complaint or identification of an additional respondent, the following shall be served:

(a) A notice identifying the alleged discriminatory practice and advising the respondent of the procedural rights and obligations of a respondent under this section; and

(b) A copy of the original complaint.

(H) All executive departments and agencies of the city shall administer their departments, programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this chapter and shall cooperate with the chief executive officer and the Commission to further the purposes.

(Ord. 1777, passed 6-7-93)

CHAPTER 93: FIRE REGULATIONS

Section

General Provisions

93.01 Establishment of fire zones

Fire Prevention

93.20 Open burning regulations

93.21 Modifications

93.22 Approved devices

93.23 Storage of inflammable liquids

93.24 Storing combustible material

93.25 Burning combustible material

Cross-reference:

Building Regulations, see Chapter 150

GENERAL PROVISIONS

§ 93.01 FIRE ZONES ESTABLISHED.

(A) *Boundaries.* All that part of the city within the following described zones shall be designated and known as the fire zone of the city. Beginning in the center of South Anderson Street at a point 62 feet south of the south line of the Conrail, formerly Nickel Plate Railroad, running thence east on the line to the northeast corner of Lot No. 12 in Barton's Fifth Addition to the city; thence south to the centerline of South "D" Street, thence east to the centerline of Main Street, thence west to the centerline of North 18th Street, thence north to the centerline of the first alley north of North "A" Street, thence west to the centerline of the first alley east of North Anderson Street, thence north to the centerline of North "C" Street, thence west on North "C" Street to the east line of the Conrail, formerly Nickel Plate Railroad, thence on and along the east line and in a northwesterly direction to the centerline of North "D" Street, thence west on North "D" Street to the centerline of the first alley east of North 12th Street, thence south to the centerline of the first alley north of North "A" Street, thence east to the centerline of North 13th Street, thence south on North 13th Street to the centerline of Main Street, thence east to the center of Duck Creek, thence on and along the center of Duck Creek to the centerline of the first alley south of South "A" Street, thence east to the centerline of the second alley west of South Anderson Street, thence south to the south line of the right of way of the Conrail, formerly Nickel Plate Railroad, thence east on the right-of-way to the centerline of the first alley west of South Anderson Street, thence

south to the centerline of South “D” Street, thence east on South “D” Street to the centerline of South Anderson Street, thence north on South Anderson Street to the place of beginning.
(‘66 Code, § 4-8-4-1)

(B) *Construction regulations.* No wooden buildings shall be erected or constructed within the fire zone, except as hereinafter permitted. No building shall be erected or constructed within the fire zone unless the same shall be erected or constructed in conformity with the following provisions.

(1) All outside and main partition walls shall be made of stone, brick, concrete block or other fire proof material.

(2) Outside and main partition walls not exceeding 24 feet in height from the top of the sidewalk to the underside of the roof joists or rafters shall be in thickness not less than eight inches if of brick, and not less than 16 inches if of stone, but such walls of stores, mills, warehouses and manufacturing establishments not exceeding 24 feet in height, measuring as aforesaid, shall be in thickness not less than 12 inches, if of brick, and not less than 18 inches if of stone. In any building of whatsoever kind exceeding three stories in height, the walls of the two lower stories shall be in thickness not less than 16 inches if of brick, and not less than 24 inches if of stone; all concrete block walls shall be not less than eight inches thick.

(3) All joists, beams and other timbers in outside and main partition walls shall be separated at least two inches from each other with stone or brick laid in mortar, and all wooden lintels or plate pieces in the front or rear walls shall recede from outside of the wall at least four inches, except that lintels of timber may be used in rear of metal fronts, and plates of wood may be used in cornices; but all cornices shall be securely fastened in the walls of the building with iron rods in such manner as that, in case of fire, they will not fail until burned to pieces.

(4) In all buildings of more than one story there shall not be more than 30 feet of space between the outside and main partition walls, unless the lower story of the building shall be supported by iron or other columns or supports of fireproof material between the walls.

(5) All end and partition walls shall extend above the sheeting of the roof at least seven inches or three courses of brick, and in no case shall planking or sheeting of the roof extend across any partition or end walls, provided that the words “main partition walls,” as used by this subchapter, shall be construed to mean the partition walls as shall support joists.
(‘66 Code, § 4-8-4-2) (Ord. 1172, passed 10-3-66)

FIRE PREVENTION

§ 93.20 OPEN BURNING REGULATIONS.

(A) *General regulations.* No person shall burn or cause to be burned any trash, lumber, leaves,

straw or any other combustible material on any asphaltic or tar street or in a place, amount or manner or under such weather conditions as would endanger surrounding property. ('66 Code, § 4-8-2-1)

(B) *Combustibles*. Ashes, smoldering coals or embers, greasy or oily substances and other combustible receptacles shall not be placed or allowed to remain within eight feet of any combustible materials or construction made up of combustible receptacles. All receptacles containing substances shall be placed on a non-combustible floor or on the ground outside of the building and shall be kept at least two feet away from any combustible wall or partition. ('66 Code, § 4-8-2-2)

(C) *Accumulations*.

(1) No person shall permit to remain upon any roof or in a courtyard, vacant lot or open space, any accumulation of waste paper, hay, straw, grass, weeds, litter or combustible or inflammable waste or rubbish of any kind in a quantity as would constitute a fire hazard.

(2) Suitable presses shall be installed and used as needed in all stores, apartment houses, factories and similar places where waste paper and other combustible material rapidly accumulate. ('66 Code, § 4-8-2-3)
(Ord. 1172, passed 10-3-66)

§ 93.21 MODIFICATIONS.

The Fire Chief shall have power to modify any of the provisions of the city fire regulation relating to inspections upon application in writing by the owner or lessee, or by his duly authorized agent, when there are practical difficulties in the way of carrying out the strict letter of the sections; provided that the spirit of these sections shall be observed, public safety secured, and substantial justice done. The particulars of modification, when granted or allowed, and the decision of the Fire Chief thereon shall be entered upon the records of the Elwood Fire Department and a signed copy furnished the applicant. ('66 Code, § 4-8-2-4) (Ord. 1172, passed 10-3-66)

§ 93.22 APPROVED DEVICES.

As used in this subchapter the word "approved" as applied to devices or materials means acceptable to the Fire Chief by reason of having been tested and examined by him or by some recognized testing laboratory against fire hazard. ('66 Code, § 4-8-2-5) (Ord. 1172, passed 10-3-66)

§ 93.23 STORAGE OF INFLAMMABLE LIQUIDS.

(A) *Storing inflammable liquids*. By reason of the fire hazard and explosive hazard attending the storage of large quantities of inflammable liquids such as gasoline, kerosine, naphtha, benzine and other similar liquids, excepting fuel oil and distillate, located within the city, it is hereby declared unlawful

for any person to store or cause to be stored in tanks or other containers hereafter constructed or installed within the city, or to construct tanks or other containers for the purpose of storing inflammable liquids of combined capacities in excess of 5,000 gallons at any one location within the city. This shall not prohibit the underground storage of inflammables for retail outlets where the storage capacity does not exceed 18,000 gallons. ('66 Code, § 4-8-3-1)

(B) *Storage tank location.* The word "location" shall mean the occupation and use of an area occupied by storage and tankage and the area surrounding within a radius of 150 feet from the tankage or if a public street intervenes within 150 feet, then to the public street. ('66 Code, § 4-8-3-2)

(C) *Existing locations.* This subchapter shall not affect existing locations and uses thereof; provided, however, that in event and at the time of termination of the location now existing and discontinuance of the use for storage purposes now thereof made which would otherwise fall within the terms of these sanctions where the cessation of use shall extend over a period over four months, the reestablishment of which shall be prohibited except as conforming to the sections. ('66 Code, § 4-8-3-3)

(D) *Underground storage.* This subchapter shall not apply to or govern the storage of inflammable liquids upon or under the surface of premises of manufacturing or industrial plants, shops or factories intended for use therein, where liquids are not withdrawn for transportation or use away from the premises and the location of the tankage is in control of the owner of the plant and constitutes a part of the area occupied by the plant, shop or factory. ('66 Code, § 4-8-3-4)
(Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 93.24 STORING COMBUSTIBLE MATERIAL.

No person in this city shall have, buy or keep any hay or straw in a stack or pile without having the same enclosed or secured so as to protect it from flying sparks of fire. No person shall keep or permit to be kept in cellars or in the rear portion of storerooms or warehouses any hay, straw or combustible material.

('66 Code, § 4-8-4-6) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 93.25 BURNING COMBUSTIBLE MATERIAL.

No hay, straw, shavings or other combustible material shall be set fire to or burned within any street, alley or public or private grounds within the fire zones of the city, nor shall any substance be burned in any part of the city outside of the fire zones between sunset of one day and sunrise of the next succeeding day. In all cases, when the Elwood Police Chief shall deem the burning to be dangerous, he shall cause the same to be removed, or extinguished and to arrest the person who caused the burning, if the person shall refuse to obey his order in reference thereto.

('66 Code, § 4-8-4-7) (Ord. 1172, passed 10-3-66)

CHAPTER 94: NUISANCES

Section

General Provisions

- 94.01 Definition
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Noise Control

- 94.20 Scope
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GENERAL PROVISIONS

§ 94.01 DEFINITION.

For the purpose of this chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

NUISANCE. The doing of an unlawful act, the omitting to perform a duty or the suffering or permitting of any condition or thing to be or exist, which act, omission, condition or thing either:

- (1) Injures or endangers the comfort, repose, health or safety of others;

- (2) Offends decency;
 - (3) Is offensive to the senses;
 - (4) Unlawfully interferes with, obstructs, tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage;
 - (5) In any way renders other persons insecure in life or the use of property; or
 - (6) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.
- ('66 Code, § 4-9-1-1) (Ord. 1813, passed 8-7-95)

§ 94.02 NUISANCES ENUMERATED.

The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property of the following items, conditions or actions are hereby declared to be and constitute a nuisance; provided, however, this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive:

- (A) Vegetation which has attained a height of eight inches or more and has not been cut, mown or otherwise removed from private property which is abandoned, neglected or disregarded. Vegetation planted for some useful or ornamental purpose is excepted;
- (B) Vegetation, trees or woody growth on private property which, due to its proximity to any governmental property, right-of-way or easement, interferes with the public safety or lawful use of the governmental property, right-of-way or easement;
- (C) A condition which causes property to become a health or safety hazard, unless specifically authorized under existing laws and regulations;
- (D) Accumulation of rubbish, trash, refuse, junk and other abandoned materials, metals, lumber or other things;
- (E) Any condition which provides harborage for rats, mice, snakes and other vermin;
- (F) Any building or other structure which is in such a dilapidated condition that it is unfit for human use, occupancy, or habitation; kept in such an unsanitary condition that it is a menace to the health of people residing in the vicinity thereof; or presents a more than ordinarily dangerous fire hazard in the vicinity where it is located;
- (G) All unnecessary or unauthorized noises and annoying vibrations, including noises;

(H) All disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of odors and stenches;

(I) The carcasses of animals or fowl not disposed of within a reasonable time after death;

(J) The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, dead animals, creamery, industrial wastes or other substances;

(K) Any building, structure or other place or location where any activity which is in violation of local, state or federal law is conducted, performed or maintained;

(L) Any accumulation of stagnant water permitted or maintained on any lot or piece of ground;

(M) Dense smoke, noxious fumes, gas, soot or cinders;

(N) The unauthorized obstruction of any public street, road or sidewalk;

(O) Any abandoned vehicle including but not limited to automobiles, trucks, trailers, campers, boats and recreational vehicles;

(P) Any machinery on any lot which contains any type of residential use, trash, garbage or other waste shall not be kept or stored outside of an enclosed building except in sanitary containers. All incinerators or other equipment for the storage or disposal of material shall be kept in clean and in sanitary condition. The term waste shall include, but not be limited to, all discarded household furniture, appliances, building materials, tools, toys, automotive or other mechanical parts, farm machinery, and other household fixtures and equipment or parts thereof which are not in use within the subject premises. Storage of the items shall be restricted to the area within the principal residential building or to enclosed accessory buildings such as garages, garden sheds, and storage buildings. Exterior storage of items is forbidden is hereby added;

(Q) Any structure not built or manufactured for permanent residence shall not be used as a dwelling; and

(R) Trash and trash receptacles shall not be placed at curbside for pick-up before 6:00 p.m. on the evening proceeding scheduled pick up day. All receptacles shall be removed from curbside by 6:00 p.m. of scheduled pick up day.

(‘66 Code, § 4-9-1-2) (Ord. 1813, passed 8-7-95; Am. Ord. 1813, passed 6-3-96) Penalty, see § 10.99
Statutory reference:

For provisions on the authority to enter onto real property, correct ordinance violations and obtain lien for same, see I.C. 36-1-6-2.

For provisions on the municipal home rule, see I.C. 36-1-3-1 et seq.

§ 94.03 NUISANCES PROHIBITED.

It shall be unlawful for any property owner, occupant or other person, to allow a nuisance to exist. ('66 Code, § 4-9-1-3) (Ord. 1813, passed 8-7-95) Penalty, see § 10.99

§ 94.04 ABATEMENT AND ENFORCEMENT PROCEDURES.

(A) (1) *Abatement procedures.* The Planning Director also known as Building Inspector, Building Commissioner and Planning Commissioner and law enforcement officers may at any time require the owner and/or occupant of any property upon which a nuisance as herein defined to do all things necessary to remove the nuisance from the property by giving the owner and/or occupant ten days' written notice to the existence of the nuisance. The notice as herein required shall state the nature of the alleged nuisance and the action deemed necessary to correct the condition and shall fix a date not sooner than ten days from the date of the mailing of the notice when the property owner and/or occupant must remove the nuisance. All notices as herein required shall be sent certified mail, no return receipt, or personal service, to the occupant or owner at the address of the property, if it be a dwelling, and to the last known address of the owner as reflected in the tax rolls of the city, township or the county.

(2) Upon the failure of the owner and/or occupant to cause the abatement of the nuisance as required by this section, the Planning Director may proceed at once to cause to be abated the nuisance and charge the cost thereof against the owner and/or occupant of the property. The liability created herein shall be joint and several as to the owners and any occupants or tenants. The charges incurred shall be certified to the Madison County Auditor and shall become a lien on the real estate.

(B) *Enforcement procedures.* In lieu of the abatement procedures set forth in division (A) of this section, the Building Inspector, Building Commissioner, Planning Director, Planning Commissioner, and any law enforcement officer may, in his or her sole discretion, cite a violation of § 94.02(A), (B), (D), (E), (G), (H), (L), (M), (N), or (O) directly into the City Court, or other Court of competent jurisdiction, for enforcement of said violations.

('66 Code, § 4-9-1-4) (Ord. 1813, passed 8-7-95; Am. Ord. 1955, passed 9-5-00; Am. Ord. 1813, passed 8-9-04)

§ 94.05 COLLECTION OF FEES.

The Planning Commission shall, upon completion of all acts necessary to abate the nuisance, send a statement to the owner and/or occupant of the property notifying the owner and/or occupant of the fees and charges owing to the city for its services. Upon the failure of the owner and/or occupant to pay the fees and charges in full within 30 days, the Planning Commission then may cause charges and fees to be placed upon the tax duplicate and collected the same as taxes. The Planning Commission may, in

the alternative, refer the charges and fees to the City Attorney who shall forthwith collect the fees and charges by civil process.

('66 Code, § 4-9-1-5) (Ord. 1813, passed 8-7-95)

Statutory reference:

For provisions on the authority to enter onto real property, correct ordinance violations and obtain a lien for same, see I.C. 36-1-6-2

§ 94.06 AUTHORITY OF PLANNING COMMISSION.

The Planning Commission shall, where necessary, designate individuals and institute procedures to carry into force and effect this chapter.

('66 Code, § 4-9-1-6) (Ord. 1813, passed 8-7-95)

§ 94.07 SUPPLEMENTAL REGULATIONS.

The provisions of this chapter are hereby declared to be supplemental to all other ordinances of the city.

('66 Code, § 4-9-1-7) (Ord. 1813, passed 8-7-95)

§ 94.08 RADIO AND TELEVISION INTERFERENCE.

(A) *Interference declared a public nuisance.*

(1) The use of "D.C." meters, universal meters or violet ray machines between the hours of 6:00 p.m. and 11:00 p.m. shall be deemed and hereby declared a public nuisance.

(2) The running, operating or other use of electrical equipment of electricity except X-ray machines used in cases of emergency, and street and interurban cars, which shall cause interference with or distort radio or television reception within the city between the hours of 6:00 p.m. and 11:00 p.m. shall be deemed and hereby is declared to be a public nuisance.

('66 Code, § 5-2-1-1)

(B) *Prohibited uses.*

(1) It shall be unlawful for any person, firm or corporation to use any "D.C." meter, universal meter or violet ray machine within the city between the hours of 6:00 p.m. and 11:00 p.m.; and

(2) It shall be unlawful for any person, firm or corporation to use, run or operate any electrical equipment, electrical appliance or electricity, except an X-ray machine used in cases of emergency, and street or interurban cars, equipment, appliance or current shall cause interference with or distort radio or television reception within the city between the hours of 6:00 p.m. and 11:00 p.m.

('66 Code, § 5-2-1-2)

(C) *Intentional interference.* It shall be unlawful for any person, firm or corporation to use, run or operate any electrical equipment, electrical appliance or electricity except an X-ray machine used in cases of emergency, and street or interurban cars, which the equipment, appliance or current shall intentionally cause interference with or distort radio or television reception within the city, during any hour of day or night. ('66 Code, § 5-2-1-3)
(Ord. 1172, passed 10-3-66) Penalty, see § 10.99

NOISE CONTROL

§ 94.20 SCOPE.

This subchapter shall apply to the control of all noise within the city limits, as they exist now or may hereafter be established.
(Ord. 1841, passed 6-5-95)

§ 94.21 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

MOTOR VEHICLE. Any vehicle powered by a mechanical engine, and designed to be driven or used on any public or private property. The definition shall include, but not be limited to: automobiles, vans, trucks, motorcycles, motor scooters, dune buggies, snowmobiles, all-terrain vehicles, go-carts, minibikes and trail bikes.

PERSON. Any individual, association, partnership or corporation which includes any officer, employee, department, agency or instrumentality.
(Ord. 1841, passed 6-5-95)

§ 94.22 LOUD AND UNNECESSARY NOISE.

(A) It shall be a violation of this subchapter for a person to make any loud, raucous, improper, unreasonable, offensive or unusual noise or disorder of tumult, which disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the city or to permit noise, disorder or tumult to be made in or about his or her house or premises, and the same is hereby declared to be a public nuisance.

(B) Further, it shall be the duty of every owner, occupant, manager, agent or operator of any property, structure, vehicle, or business in the city, to prevent persons using property under their control from violating this subchapter.

(Ord. 1841, passed 6-5-95) Penalty, see § 10.99

§ 94.23 ENUMERATION OF CERTAIN PROHIBITED ACTS.

The following acts, uses or noises, among others, subject to specific exemptions, are declared to be loud, raucous or disturbing noises in violation of this subchapter. The enumeration shall not be deemed to be exclusive:

(A) Using, operating or permitting to be played, used or operated any machine or device for producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the person who is in the room, vehicle or property in which the machine or device is operated and who is a voluntary listener.

(B) Using, operating or permitting the use or operation of any machine, instrument or device capable of producing or reproducing of sound which is cast upon other properties including the public right-of-way for the purposes of commercial advertising or to attract attention to any activity, performance, sale or place of structure.

(C) Using, operating or permitting the use or operation of any machine, instrument or device capable of producing or reproducing any sound on any public transportation vehicle.

(D) Using, operating or permitting to be played, used or operated any machine or device for the producing or reproducing of sound of any public right-of-way adjacent to any school, institution of higher learning, church or court while the same are in use or adjacent to any hospital which unreasonably interferes with the working of the institution or which unduly disturbs patients in the hospital.

(Ord. 1841, passed 6-5-95) Penalty, see § 10.99

§ 94.24 PROHIBITED NOISE.

No person shall play, use, operate or permit to be played, used or operated, any machine or device for the producing or reproducing of sound, if it is located in or on any of the following:

(A) Any public property, including any public right-of-way, highway, building, sidewalk, park or thoroughfare, if the sound generated is audible at a distance of 30 feet from its source; and

(B) Any motor vehicle on a public right-of-way, highway or public space if the sound generated is audible at a distance of 30 feet from the device producing the sound.

(Ord. 1841, passed 6-5-95) Penalty, see § 10.99

§ 94.25 MOTOR VEHICLE NOISE.

The following acts are declared to be a public nuisance, but the enumeration of the particular offenses hereinafter particularly defined shall not be construed as limiting the generality of this subchapter, or limiting the offense hereunder to the particular offense hereinafter enumerated:

(A) The continuous or repeated sounding of any horn or signal device of a motor vehicle when not used as a danger signal. Continuous shall be defined to include unnecessary or unreasonable periods of time.

(B) The use of any motor vehicle with appurtenances attached thereto so as to create loud or unnecessary grating, grinding, rattling or other noise.

(C) The use of any motor vehicle with or without the attachment of various appurtenances thereto so as to create loud or unnecessary grating, grinding, rattling or other noise or noises. This shall include the use of any vehicle the use of which causes excessive noise as a result of a defective or modified exhaust system, or as a result of unnecessary rapid acceleration, deceleration, revving the engine or tire squeal.

(Ord. 1841, passed 6-5-95) Penalty, see § 10.99

§ 94.26 EXEMPTIONS.

Exemptions shall not be permitted within any duly established quiet zone when the zone is designated by appropriate signage. The following shall be exempted from the provisions of this subchapter:

(A) Sound emitted from sirens of authorized emergency vehicles;

(B) Lawn mowers, garden tractors and similar home power tools when properly muffled, between the hours of 7:00 a.m. and 10:00 p.m.;

(C) Burglar alarms or other warning devices when properly installed on public or private property, providing the cause for alarm or warning device sound is investigated and turned off within a reasonable period of time;

(D) Celebrations on Halloween and legal holidays;

(E) Permitted parades or festivals, between the hours of 8:00 a.m. and 12:00 a.m., Sunday through Thursday; and between 8:00 a.m. and 1:00 a.m., Friday through Saturday;

(F) Attendant noise connected with the actual performance of athletic or sporting events and practices related to them;

(G) The emission of sound for the purposes of alerting persons to the existence of an emergency, or for the performance of emergency work;

(H) Sounds associated with normal conduction of a legally established non-transient business when the sounds are customary, incidental and within the normal range appropriate for such use; and

(I) In the case of motor vehicles, where the noise is the result of a defective or modified exhaust system, if the cause is repaired or otherwise remedied within seven calendar days.
(Ord. 1841, passed 6-5-95)

CHAPTER 95: PARKS

Section

General Provisions

95.01 Authority and jurisdiction

Calloway Park Regulations

- 95.15 Closing hours of park
- 95.16 Vehicle regulations
- 95.17 Damage to property prohibited
- 95.18 Immoral and disorderly conduct prohibited
- 95.19 Littering prohibited
- 95.20 Animals in owner's control
- 95.21 Pets in city parks
- 95.22 Intoxicating liquors prohibited

Cross-reference:

Park and Recreation Board, see § 33.07

GENERAL PROVISIONS

§ 95.01 AUTHORITY AND JURISDICTION.

The authority and jurisdiction of the Elwood Park Department shall include Kiwanis Park, Wendell L. Welkie Memorial Park, Calloway Park, the tennis and basketball courts located next to the Elwood swimming pool, the Elwood swimming pool, the Babe Ruth Park, Elwood Athletic Association football field, Little League baseball area and the old high school football field located on Calloway Park property.

('66 Code, § 7-1-1-1) (Ord. 1412, passed - -76; Am. Ord. 1412, passed 5-12-78)

CALLOWAY PARK REGULATIONS**§ 95.15 CLOSING HOUR OF PARK.**

The park shall close every night at 10:00 p.m. unless special permission shall be given to keep it open later.

('66 Code, § 7-1-2-8) (Ord. 1172, passed 10-3-66)

§ 95.16 VEHICLE REGULATIONS.

(A) It shall be unlawful for any automobile or motorcycle to be driven through the park other than on designated roadways, without special permission of the person or persons in charge of the park.

(B) No vehicle of any kind shall be allowed to stand in any drive or roadway.

(C) No automobile or motorcycle shall be operated or run in the park at a greater speed than ten miles an hour.

(D) No automobile or motorcycle shall be run or operated in any manner in the park with the muffler open.

('66 Code, § 7-1-2-7) (Ord. 418, passed 6-16-19) Penalty, see § 10.99

§ 95.17 DAMAGE TO PROPERTY PROHIBITED.

It shall be unlawful for any person to maliciously, mischievously, purposely or carelessly cut, break, deface or otherwise injure any tree, shrub, building, seat, plant, flower or other property belonging to or situated in the park.

('66 Code, § 7-1-2-4) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 95.18 IMMORAL OR DISORDERLY CONDUCT PROHIBITED.

It shall be unlawful for any person to engage in immoral, rude, indecent, disorderly or boisterous conduct in the park.

('66 Code, § 7-1-2-5) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 95.19 LITTERING PROHIBITED.

It shall be unlawful for any person to throw any bottles, waste paper or refuse upon any part of the park. Paper or refuse must be deposited in proper receptacles maintained by the Park and Recreation Board and all bottles must be returned to the stand where purchased.

(‘66 Code, § 7-1-2-3) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 95.20 ANIMALS IN OWNER’S CONTROL.

It shall be unlawful for any person to leave any horse or other animal, ridden or led by him or her in his custody, unattended in any part of the park, unless the horse or other animal is securely tied to a hitch rack.

(‘66 Code, § 7-1-2-2) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 95.21 PETS IN CITY PARKS.

(A) No person shall allow any pet in his or her custody, whether that pet be owned by that person or harbored by that person, to enter upon any part of the grounds of any city park, unless the pet is on a leash, which leash shall not exceed eight feet in length.

(B) It shall be the responsibility of any person bringing a pet into a city park to clean up any matter excreted by the pet.

(C) Leashed pets are not prohibited except in the following areas of any park:

- (1) Amphitheater;
- (2) Swimming pools and pool areas;
- (3) Tennis courts;
- (4) Golf course; and
- (5) Within 20 feet of playground equipment or playground areas.

(D) Pets may be prohibited for special events, such a festivals, or other special events conducted by third parties, or city agencies. This prohibition shall not apply to those animals that are part of a performance, exhibit, or other activity conducted as part of a festival or event.

(E) Subsections (C) and (D) of this section shall not apply to any guide dog specially trained for the purpose of accompanying a totally or partially blind person or a deaf person, or a service dog specially

trained for the purpose of accompanying a physically disabled person, or a dog trained and licensed by and in possession of the Elwood Police Department or any other law enforcement agency.

(F) Violators of this section shall be subject to penalty pursuant to § 10.99.
(‘66 Code, § 7-1-2-1) (Ord. 1172, passed 10-3-66; Am. Ord. 2307, passed 6-4-18) Penalty, see § 10.99

§ 95.22 INTOXICATING LIQUORS PROHIBITED.

No intoxicating liquors shall be allowed on or in the park.
(‘66 Code, § 7-1-2-6) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

CHAPTER 96: STREETS AND SIDEWALKS

Section

General Provisions

- 96.01 Established street grade
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GENERAL PROVISIONS

§ 96.01 ESTABLISHING STREET GRADE.

It shall be unlawful for any person, firm or corporation, acting either for himself or itself or as contractor, sub-contractor, principal agent, employer or employee to make, build, construct or resurface any street or other public highway with brick, stone, gravel, macadam, cement, asphalt or other material, at or on any other grade than on the grade of the street or highway as established by the city. ('66 Code, § 4-5-1-1) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 96.02 BACKFILLING.

For the preservation of the streets, alleys and highways of the city, all excavated places, ditches, trenched, pits and holes of every character cut six inches or more into the sub-base of any brick, concrete or other hard surfaced or permanent improved street, alley or highway within the city, shall be backfilled and built up as follows:

(A) Material for backfill shall consist of suitable dry or damp excavated material, sand, gravel, crushed stone, cement concrete or bituminous concrete. Excavated materials too wet or rammed solidly in place shall not be used.

(B) The sub-base excavation shall be built up in layers not more than six inches in thickness, each layer thoroughly rammed until solid. Excavated materials too wet to tamp solidly shall be discarded and sand, gravel or crushed stone provided and used in place thereof. In all cases, the materials used shall be such as to give a solid compact mass.

(C) The paved excavation shall be cut to additional width as to provide not less than eight inches solid bearing on all sides of the excavated opening made in the sub-base. The excavation of surface materials or pavement shall be made with perpendicular sides through both the wearing course and base.

(D) The excavated opening from the sub-base surface to the finished surface of the improvement shall be built up of cement concrete or cement concrete and bituminous wearing surface. In no case shall the entire thickness of the cement concrete be less than six inches and in all cases shall be carried down to solid sub-base.

(E) Cement concrete shall consist of one part Portland Cement, to 2½-parts clean washed sand and not more than five parts clean washed gravel or crushed stone. All materials shall be kept clean and subject to the approval of the City Civil Engineer and his decision as to their fitness shall be final and

binding on all parties. The concrete shall be thoroughly mixed until homogeneous, (at least twice dry and twice wet before placing) and to uniform consistency that will produce moisture when tamped in place. When cement concrete only is used, the finish surface shall be brought up flush with the paved surface of the roadway and finished with a wood float.

(F) The wearing surface, when advisable and deemed necessary by the City Engineer, shall consist of bituminous concrete or asphalt and applied in such manner and times as the he or she may direct.

(G) In all cases the patched surface shall be properly protected from the weather and elements until thoroughly hard, and from the traffic by suitable barricades and red lights and the city indemnified and saved harmless of any and all claims, liabilities and damages whatsoever.
(‘66 Code, § 4-5-1-2) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 96.03 TRACTION ENGINES.

It shall be unlawful for any person to operate any traction engine over and along any brick-paved street, macadam street or other improved street in the city, without placing under the wheels thereof boards of the full width of the wheels of sufficient thickness to prevent the wheels from coming in contact with the surface of the street.

(‘66 Code, § 4-5-1-3) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 96.04 DEFINITION OF SIDEWALK; APPLICATION.

(A) A “section of sidewalk” is defined as that rectangular block between contraction joints.

(B) The provisions of this chapter shall apply to curbs as well as sidewalks.
(‘66 Code, § 4-5-2-1) (Ord. 1172, passed 10-3-66)

§ 96.05 RECONSTRUCTION OF SIDEWALKS.

(A) *Reconstruction permit.* No person, firm or corporation shall cut into, dig into or damage any sidewalk within the city, without first procuring a permit from the Building Commissioner. (‘66 Code, § 4-5-2-2)

(B) *Bond required.*

(1) At the time of the issuance of a permit by the Clerk-Treasurer, the person, firm or corporation cutting into, digging into or damaging the sidewalk, shall give the description and location of where they will be doing the work and the number of sections of walk to be affected, at which time the person, firm or corporation shall post a bond, either cash or surety, with the Clerk-Treasurer in an amount of not less than \$1 for each square foot of sidewalk that will be damaged. In computing the amount to be damaged, it shall be computed on the basis of a section or number of sections.

(2) The giving of a performance bond shall not be required of the city or of the city-owned utilities, however, they shall comply with all other provisions of § 96.04 and this section. ('66 Code, § 4-5-2-3)

(C) *Material requirements.* Each person, firm or corporation doing the work referred to in § 96.04 and this section shall use materials and perform the workmanship that is equal to or of better quality than the existing walk and if any part of the existing section damaged, the entire section must be replaced. The phase for the walk shall be of clean granular fill. ('66 Code, § 4-5-2-4)

(D) *Inspection.* When the person, firm or corporation is ready to pour the concrete for the sidewalk, the City Engineer shall be notified so that the same can be inspected and after the inspection and upon approval by the City Engineer and/or Building Commissioner, or his legally appointed assistant, the performance bond above mentioned will be refunded or released, as the case may be. ('66 Code, § 4-5-2-5)
(Ord. 1172, passed 10-3-66)

§ 96.06 RECONSTRUCTION OF SIDEWALKS.

(A) *New construction permit.* It shall be unlawful for any person, except a person doing work under contract with the city, to construct any sidewalk upon any street or public highway within the city without first obtaining the consent of the Building Commissioner and otherwise complying with the provisions of divisions (B) and (C) below. ('66 Code, § 4-5-2-6)

(B) *Application.* Any person desiring to construct a sidewalk upon any street in the city shall present a written petition signed by the person or persons desiring to construct the sidewalk, to the Building Commissioner stating the location of the sidewalk and the kind of sidewalk proposed to be built. If the proposed sidewalk conforms to the requirements hereinafter set out, permission will be granted to construct the walk; provided however, that the plans and specifications for the same shall be furnished by the City Engineer and/or Building Commissioner, and the same shall be constructed under his supervision and subject to his approval. ('66 Code, § 4-5-2-7)

(C) *Method and materials.* All cement sidewalks hereafter built in the city shall be constructed by making an excavation to a depth of 14 inches below the sidewalk grade. The foundation or sub-base should be of clean hard cinders, crushed stone, gravel or sand, nine inches in depth, and thoroughly compacted. One side foundation shall be placed with a 4 ¼-inch base composed of one part cement, 2½-parts of gravel, and five parts sand, and on the side base shall be spread a ¾-inch wearing surface composed of two parts cement to three parts screened torpedo gravel. ('66 Code, § 4-5-2-8)
(Ord. 1172, passed 10-3-66)

§ 96.07 NONCONFORMING SIDEWALKS.

Any sidewalk not built according to the provisions of § 96.06 (B) and (C) may be condemned by the Building Commissioner and at his or her direction removed by the Street Commissioner or Civil Engineer.

(‘66 Code, § 4-5-2-9) (Ord. 1172, passed 10-3-66)

§ 96.08 REMOVAL OF SNOW, ICE AND DIRT.

The owner or occupant of any lot or premises within the city shall remove all snow, ice and dirt from the sidewalk in front of the lot or premises, and every person failing to comply with the provisions of this section within 24 hours after any fall of snow, or who shall fail to remove any ice or dirt from the sidewalk five hours after being notified by the Elwood Police Chief, shall be in violation of this section.

(‘66 Code, § 4-5-2-16) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 96.09 BICYCLES PROHIBITED.

No person shall ride any bicycle on and along any of the sidewalks of the city, except in crossing the same.

(‘66 Code, § 4-5-2-17) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 96.10 OBSTRUCTING SIDEWALKS.

(A) No person shall in any manner prevent, obstruct, hinder or delay the free passage and clear view on along or across any sidewalk in the city, by placing, leaving or permitting to be placed or left thereon, any building material, vehicle, animal, furniture, agricultural implements, stove, boxes, barrels, kegs, bales, packages, goods, wares, merchandise, chicken coups, livestock, fish, fruit or vegetable stands or any other articles of materials whatever, by hanging or suspending along or over any sidewalk, any goods, merchandise or other articles of any character.

(B) Nothing herein contained shall prevent any person from loading, unloading and conveying across a sidewalk any articles as may be necessary in the ordinary affairs of business.

(C) Any person desiring to erect or repair any building may obtain from the Building Commissioner a permit to use a portion of the sidewalk as may be necessary there for a period not exceeding 60 days.

(‘66 Code, § 4-5-2-18) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 96.11 GASOLINE PUMPS PROHIBITED; EXCEPTION.

(A) It shall be unlawful for any person, firm or corporation to build, construct or install any gasoline or oil pump in any lawn, gutter curb, or sidewalk located within the city limits.

(B) The words lawn, gutter or sidewalks as used herein shall mean that area of ground between the curb line or the street line and the property line adjacent to and paralleling the street or curb line. The area shall be that which is ordinarily considered public property and not owned by the property owner. ('66 Code, § 4-5-2-19)

(C) Divisions (A) and (B) above shall not affect any gasoline pump installed in the lawn, gutter, curb or sidewalks of the city which may have been installed prior to March 28, 1931, providing that at the termination of use of the gasoline pump existing on March 28, 1931, and discontinuance of uses now made thereof for a period in excess of four months, shall be considered a new installation, the reestablishment of which shall be prohibited.

(D) Shall any gasoline or oil pump which may have been installed or placed in any lawn, gutter, curb or sidewalk within the city prior to March 28, 1931, become unfit for service or be condemned by the Weights and Measures Department of the state or of the United States, then the owners thereof shall have the right to replace the defective gasoline or oil pump or have the same repaired to make it fit for service, providing that the replacement or repair to the defective gasoline or oil pump shall be completed within a period not to exceed four months from discontinuance of use thereof. ('66 Code, § 4-5-2-20) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

SIDEWALK REPAIR PROCEDURES**§ 96.25 DUTY OF OWNER TO REPAIR.**

(A) Whenever the owner of any lot or part of lot, on any street or alley in the city, shall permit the sidewalk or any part of the same along or in front of a lot or part of lot, to become out of repair, it shall be the duty of the Street Commissioner of the city to immediately notify the owner or owners of the lot or part of lot of the fact of the sidewalk being out of repair. The notice shall be printed or in writing and addressed or delivered to the owner or owners if their present address be known to the Street

Commissioner. The notice shall state specifically the number or description of the lot or part of a lot; the nature and extent of the repairs necessary to be made to the sidewalk; the probable cost thereof and fixing a time not more than 20 nor less than ten days in which the owner or owners are required to make and complete the repairs as indicated in the notice as aforesaid. Provided: that if a sidewalk be dangerous, the Street Commissioner may cause repairs to be made immediately and without any notice to the owner or owners of the lot or part of lot along or in front of which a dangerous sidewalk is situated.

(B) Service of the notice as aforesaid may be had and made on the owner, his resident agent, if known, to the Street Commissioner, or upon the person or persons in possession of the lot or part of lot, in the order named and if the owner or owners of the lot or part of lot shall be non-resident of the city and shall have written any agent or person or persons in possession of the lot or part of lot, then notice of the proposed repairs shall be given by publication in a daily newspaper of general circulation published in the city, for three successive days, which notice shall state the matters and things provided to be given to a resident owner of a lot or part of a lot. The cost of the publication shall be charged and collected by the city as an item of expense in making the repairs to the sidewalk therein mentioned. ('66 Code, § 4-5-2-10) (Ord. 1172, passed 10-3-66)

§ 96.26 FAILURE TO REPAIR.

In case the owner or owners of any lot or part of a lot on any street or alley of the city shall fail or refuse to repair the sidewalk in front of or along his or their respective properties, after service of the notice as required in § 96.25 and within the time therein fixed for the making of repairs and as indicated and set out in the notice, to the satisfaction or approval of the Street Commissioner shall make the repairs and furnish the necessary labor and materials therefor. The repairs, so made by the Street Commissioner shall be of a like kind and materials as the part of the sidewalk in good repair. The cost for the labor and materials so used by the Street Commissioner in making repairs shall not exceed \$50 for each lot or part of a lot.

('66 Code, § 4-5-2-11) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 96.27 STREET COMMISSIONER'S REPORT OF REPAIRS; ASSESSMENT.

(A) The Street Commissioner shall, at the next Council meeting after the completion of the repairs as described in § 96.26, report to the Council an itemized statement of the costs of the repairs so made by him and shall include in the report all items of expense for labor and materials used and for the publication of the notice as provided for in § 96.25. If publication shall have been necessary, the Common Council shall within 20 days after the filing of a report by the Street Commissioner, act upon the report at a regular or special meeting thereof of which five days notice shall be given by publication in a newspaper of general circulation in the city, setting forth the location, the kind and extent of same and the date of the filing of the Street Commissioner's report at which the Common Council shall meet for the purpose of confirming or modifying the amount of the assessment and charge made by the Street Commissioner and that any person interested may appear thereat and make objections to confirmation or modification. At the meeting the Common Council shall give opportunity for hearing to all parties

interested as to any objections they may have to an assessment or change and amend the report as to the assessment of property.

(B) The adoption of the report as made by the Street Commissioner or as changed and amended by the Common Council shall constitute an assessment or benefit for the repairs. The several amounts therein set out as an assessment against any lot or part of a lot shall be a lien thereon from the date of action by the Common Council and shall thereafter bear interest at the rate of 5% per annum. After the assessment as herein provided has been made by the Common Council, no suit shall lie to enjoin or restrain the collection thereof and the validity of the assessment shall not be questioned, except on appeal as herein provided for.

('66 Code, § 4-5-2-12) (Ord. 1172, passed 10-3-66)

§ 96.28 APPEAL BY SIDEWALK OWNER.

(A) Any owner or owners of any lot or part of a lot upon which the costs of sidewalk repairs have been assessed may appeal to the Madison County Circuit Court from the action of the Common Council within ten days thereafter by filing with the Clerk-Treasurer a written undertaking with surety to the approval of the Clerk-Treasurer, conditioned that he will duly prosecute and pay any and all costs that may be adjudged against him and filing therewith a statement of his grievances to wit:

- (1) That the proceedings for the making of the repairs and the assessment thereon are invalid.
- (2) That the amount of assessment to his or her property is too high.

(B) The Clerk-Treasurer shall thereupon make and file with the clerk of the court a transcript of the proceedings. The appeal shall be tried by the court without the intervention of a jury and no question shall be tried on appeal except the grievances set out in the statement of the aggrieved party filed with the Clerk-Treasurer. If the party appealing fails to reduce his assessment of benefits 10%, he shall pay the costs of an appeal. In the event there is a reduction of the amount of the assessment in the sum of 10%, however, then the city shall pay the costs of the appeal and the court shall have the power on the appeal to reduce the assessment of the property appealing and to modify the assessment as to make an assessment conform to the benefits derived from the repairs so made.

('66 Code, § 4-5-2-13) (Ord. 1172, passed 10-3-66)

§ 96.29 LIENS; FORECLOSURES.

The assessments as made, together with the interest thereon, shall be a lien upon the several lots or parts of lots so benefitted to the same extent that taxes are a lien upon property, and shall be collectable in two annual installments in the same way that taxes are collected. Assessments shall be placed upon the city tax duplicate and charged against the several lots or parts of lots as follows:

(A) 50% for each successive year for two years, to which several amounts shall be added and placed on duplicate, interest at 5% per annum payable semi-annually, which shall be calculated from

the date of the assessment until the several installments fall due; and the first 50% of the assessment shall be due and payable when the first city tax falls due and is payable after the assessment is made. If any installment of the assessment shall become delinquent the same penalty shall be added thereto as to delinquent taxes and the delinquent installment shall be collected in the same manner that delinquent taxes are collected or may be collected by foreclosure of the lien thereof in any court of competent jurisdiction as a mortgage is foreclosed. The city may bring action by its attorney and in such action may recover, in addition to the amount of the lien and the costs of proceedings, a reasonable attorney's fee for the use of its attorney for enforcing the lien and property shall be sold without relief from valuation or appraisal laws and upon the sale of the property.

(B) If no other person bid the amount of the judgement and all costs, the city may purchase the property for judgement and all costs and if not redeemed within one year from the time of sale, the sheriff shall issue to the holder of the certificate of sale a deed for the property, and the city, if the deed be issued to it, shall become the absolute owner of the property. Provided that any person may pay the whole assessment against any lot or part of a lot, with interest up to the date of payment, at any time before any part or installment of the assessment becomes due.

('66 Code, § 4-5-2-14) (Ord. 1172, passed 10-3-66)

§ 96.30 DISCHARGE OF LIEN.

Whenever any payment shall be made on an assessment, it shall be the duty of the Clerk-Treasurer to enter upon the proper record the receipt of money, and the receipt shall be a discharge of the lien of the assessment to the extent of the payment. If the payment shall be in full of principal and interest, the payment shall be a complete discharge of the assessment.

('66 Code, § 4-5-2-15) (Ord. 1172, passed 10-3-66)

MOVING BUILDINGS

§ 96.45 PERMIT REQUIRED; APPLICATION.

(A) It shall be unlawful for any person or persons to move any building over, across or along any street, sidewalk or alley in the city without first obtaining a permit so to do from the Board of Public Works and Safety of the city. ('66 Code, § 4-5-1-4)

(B) (1) The permit mentioned in division (A) above shall be based upon a formal petition in writing addressed to the Board of Public Works and Safety.

(2) The petition shall distinctly set forth the points from and to which the removal is to be made, the location from and to which the building is to be removed. It shall accurately describe the building and shall set forth specifically the route to be taken, and streets, sidewalks and alleys to be passed over.

(3) No building shall be removed over any other street, sidewalk, alley or route than specified in the petition granting the permit.

('66 Code, § 4-5-1-5) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 96.46 BOND REQUIRED.

(A) (1) The Clerk-Treasurer when requested so to do by any person, persons, firm or corporation desiring to move any building shall prepare the formal petition in writing addressed to the Board of Public Works and Safety for which services, he shall charge a fee of \$.25 to the person, persons, firm or corporation for whom he prepares the petition. The Clerk-Treasurer shall also issue to the person, persons, firm or corporation to whom any permit is granted by the Board of Public Works and Safety a duly certified copy thereof, under his hand and seal, for which services he shall charge a fee of \$.50 to the person, persons, firm or corporation receiving the same, provided however that no certified copy of the permit shall be issued until the person, persons, firm or corporation entitled thereto shall have filed with the Clerk-Treasurer a bond in the penal sum of \$500, with good free-holders or with a surety company thereon as surety, subject to the approval of the Clerk-Treasurer conditioned for the faithful and prompt performance of the work, according to specifications in the permit and further conditioned to secure the city from all damages to streets, sidewalks, alleys and other public places, and to secure the property owners of the city against damages to their private property.

(2) Any person, persons, firm or corporation desiring to engage in the business of house moving within the city may file with the Clerk-Treasurer their bond in the penal sum of \$2,500 with like security as the bond subject to the approval of the Clerk-Treasurer, which bond shall be for a period of one year from the date of its filing with the Clerk-Treasurer, and shall be conditioned upon the faithful and prompt performance of all the work of the person, persons, firm or corporation of moving buildings over the streets of the city as aforesaid during the year, according to specifications, in the permits and shall be further conditioned to secure the city from all damages to streets, sidewalks, alleys and other public places and shall be further conditioned to protect the citizens and property owners of the city against damages to their private property, and when the annual bond is filed by the person, persons, firm or corporation then it shall not be necessary for the person, persons, firm or corporation to file the aforesaid bond in the penal sum of \$500 with each permit.

(B) Until the bond is thus filed with and approved by the Clerk-Treasurer, the person, persons, firm or corporation receiving the permit or permits shall not in any case move or remove the building described in the permit or permits over, across or along any of the improved streets, alleys, sidewalks or other public places of the city.

(C) The bonds above mentioned shall be made payable to the state for the use and benefit of the city or anyone damaged by the removal and the city or anyone so damaged may maintain an action or actions for damages on the bond.

('66 Code, § 4-5-1-7) (Ord. 1172, passed 10-3-66)

§ 96.47 TIME LIMITS; DELAYS.

It shall be unlawful for any person to make any unnecessary stoppage or delays upon any street, sidewalk or alley, permit the building to remain in any one place more than 24 hours when removing a building or to occupy more than six days (exclusive of Sunday) in the transit from the old to the new location. Lights and proper guards shall be placed upon the building by the persons moving the same, when the building is left in the street, sidewalk or alleys of the city overnight.

(‘66 Code, § 4-5-1-8) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 96.48 DAMAGE TO STREET.

If any person shall injure any street, sidewalk or alley of the city, over and along which he shall remove or cause to be removed any building, he shall repair the same within 24 hours to the satisfaction of the Board of Public Works and Safety.

(‘66 Code, § 4-5-1-9) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

[Section 96.60 begins on page 64.]

TREES AND SHRUBS**§ 96.60 TREE TRIMMING PERMIT REQUIRED.**

It shall be unlawful for any person, firm or corporation to cut, prune or trim any shade tree growing in, on or along any street, alley or public highway without first obtaining a written permit so to do, from the Street Commissioner of this city. The Street Commissioner shall have supervision of the work. ('66 Code, § 4-7-1-1) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 96.61 NORTH CAROLINA POPLARS PROHIBITED; REMOVAL.

(A) Whereas there are maintained and suffered to remain in the city, shade trees of the variety known as North Carolina poplars, and whereas the North Carolina poplar shade trees by their roots and leaves obstruct the sewers of the city, and thereby interfere with the proper sanitation of the city, the same are hereby declared to be a nuisance. ('66 Code, § 4-7-1-4)

(B) It shall be unlawful within the corporate limits of the city to plant or to suffer to remain standing shade trees of the variety commonly known as North Carolina poplars and it is hereby made the duty of all owners of real estate on which shade trees of the variety are now standing or being maintained and of all owners of real estate along the street border lines of whose property shade trees of the variety are now standing or being maintained, to remove the same. ('66 Code, § 4-7-1-5)

(C) Upon failure of property owners to comply with division (B) above, the city is hereby empowered to remove all shade trees of the variety commonly known as North Carolina poplars and to assess the cost of the removal against the real estate on which they are situated or on which they abut, and the assessment so made is hereby declared a lien upon the real estate to be collected as taxes are collected. ('66 Code, § 4-5-1-6)
(Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 96.62 HEDGE TRIMMING.

The owners of hedges situated on and along the streets, sidewalks, alleys and public highways of the city shall trim and keep the hedges trimmed to a height not to exceed five feet and to a width that no part of the hedge or hedges shall extend over any sidewalk, alley, street or public highway in the city or any portion thereof.
(‘66 Code, § 4-7-1-2) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 96.63 INSPECTIONS; OWNER’S RESPONSIBILITY.

It shall be the duty of the Street Commissioner of the city to inspect hedges along the sidewalks, alleys, streets and public highways of the city each year and wherever he finds hedges that are not trim

med to comply with § 96.62, he shall give the owner or owners thereof ten days notice to trim the same in a manner as to comply with § 96.62 and upon the failure or refusal of the owner or owners so to trim the hedge he shall proceed to trim the same and report the expense of the trimming thereof to the trimming thereof to the Clerk-Treasurer who shall cause the same to be made a lien against the real estate on which the hedge or hedges are situated, and to be collected as taxes are collected.
(‘66 Code, § 4-7-1-3) (Ord. 1172, passed 10-3-66)

TITLE XI: BUSINESS REGULATIONS

Chapter

- 110. SEXUALLY ORIENTED BUSINESSES**
- 111. AMUSEMENTS**
- 112. CABLE TELEVISION**
- 113. RESIDENTIAL SALES**
- 114. PEDDLERS, ITINERANT MERCHANTS,
AND SOLICITORS**

CHAPTER 110: SEXUALLY ORIENTED BUSINESSES

Section

- 110.01 Purpose; findings and rationale
- 110.02 Definitions
- 110.03 License required
- 110.04 Issuance of license
- 110.05 Fees
- 110.06 Inspection
- 110.07 Expiration and renewal of license
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- 110.09 Revocation
- 110.10 Hearing; license denial, suspension, revocation; appeal
- 110.11 Transfer of license
- 110.12 Hours of operation
- 110.13 Regulations pertaining to exhibition of sexually explicit films on premises
- 110.14 Loitering; exterior lighting and monitoring, and interior lighting requirements
- 110.15 Remedies
- 110.16 Applicability of chapter to existing businesses
- 110.17 Prohibited conduct
- 110.18 Scierter required to prove violation or business licensee liability
- 110.19 Failure of city to meet deadline not to risk applicant/licensee rights
- 110.20 Location of sexually oriented businesses

§ 110.01 PURPOSE; FINDINGS AND RATIONALE.

(A) *Purpose.* It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the city. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

(B) *Findings and rationale.* Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Common Council, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts*

D-4, LLC, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's AM*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *NY. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); *Sewell v. Georgia*, 435 U.S. 982 (1978); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Dallas v. Stanglin*, 490 U.S. 19 (1989); and *Uniontown Retail #36, LLC v. Bd. of Comm'rs of Jackson County*, 950 N.E.2d 332 (Ind. Ct. App. 2011); *Plaza Group Properties, LLC v. Spemer County Plan Comm'n*, 911 N.E.2d 1264 (Ind. Ct. App. 2009); *Plaza Group Properties, LLC v. Spencer County Plan Comm'n*, 877 N.E.2d 877 (Ind. Ct App. 2007); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Andy's Restaurant & Lounge, Inc. v. City of Gary*, 466 F.3d 550 (7th Cir. 2006); *Blue Canary Corp. v. City of Milwaukee*, 270 F.3d 1156 (7th Cir. 2001); *Schultz v. City of Cumberland*, 228 F.3d 831 (7th Cir. 2000); *Matney v. County of Kenosha*, 86 F.3d 692 (7th Cir. 1996); *Berg v. Health & Hospital Corp.*, 865 F.2d 797 (7th Cir. 1989); *DiMa Corp. v. Town of Hallie*, 185 F.3d 823 (7th Cir. 1999); *Graff v. City of Chicago*, 9 F.3d 1309 (7th Cir. 1993); *North Avenue Novelties, Inc. v. City of Chicago*, 88 F.3d 441 (7th Cir. 1996); *Chulchian v. City of Indianapolis*, 633 F.2d 27 (7th Cir. 1980); *Illinois One News, Inc. v. City of Marshall*, 477 F.3d 461 (7th Cir. 2007); *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Metro Pony, LLC v. City of Metropolis*, 2012 WL 1389656 (S.D. Ill. Apr. 20, 2012); *Imaginary Images, Inc. v. Evans*, 612 F.3d 736 (4th Cir. 2010); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Ocello v. Koster*, 354 S.W.3d 187 (Mo. 2011); *84 Video/Newsstand, Inc. v. Sartini*, 2011 WL 3904097 (6th Cir. Sept 7, 2011); *Flanigan's Enters., Inc. v. Fulton County*, 596 F.3d 1265 (11th Cir. 2010); *East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360 (6th Cir. 2009); *Entm't Prods., Inc. v. Shelby County*, 588 F.3d 372 (6th Cir. 2009); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Peek-a-Boo Lounge v. Manatee County*, 630 F.3d 1346 (11th Cir. 2011); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007); *Jacksonville Property Rights Ass'n Inc. v. City of Jacksonville*, 635 F.3d 1266 (11th Cir. 2011); *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006); *Richland Bookmart, Inc. v. Knox County*, 555 F.3d 512 (6th Cir. 2009); *Bigg Wolf Discount Video Movie Sales, Inc. v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999); *Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002); *Fantasyland Video, Inc. v. County of San Diego*, 505 F.3d 996 (9th Cir. 2007); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *Z.J Gifts D-4, L.L.C. v. City of Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001); *People ex rel. Deters v. The Lion's Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); *Reliable Consultants, Inc. v. City of Kennedale*, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (NJD. Tex. May 26, 2005); and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove, California - 1991; Houston, Texas - 1983, 1997; Phoenix, Arizona - 1979, 1995-98; Tucson, Arizona - 1990; Chattanooga, Tennessee - 1999-2003; Los Angeles,

California - 1977; Whittier, California - 1978; Spokane, Washington - 2001; St Cloud, Minnesota - 1994; Littleton, Colorado - 2004; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997; Ft Worth, Texas - 2004; Kennedale, Texas 2005; Greensboro, North Carolina - 2003; Amarillo, Texas - 1977; Jackson County, Missouri - 2008; Louisville, Kentucky - 2004; New York, New York Times Square - 1994; the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota); Dallas, Texas - 2007; "Rural Hotspots: The Case of Adult Businesses," 19 Criminal Justice Policy Review 153 (2008); "Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD," Journal of Urban Health (2011); "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; "Sexually Oriented Businesses: An Insider's View" by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; Memphis, Tennessee - 2005-2011; and Assorted Reports Concerning Secondary Effects.

(C) The Common Council finds:

(1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. Alcohol consumption impairs judgment and lowers inhibitions, thereby increasing the risk of adverse secondary effects.

(2) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.

(3) Each of the foregoing negative secondary effects constitutes a harm which the city has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the city's rationale for this chapter, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the city's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the city. The city finds that the cases and documentation relied on in this chapter are reasonably believed to be relevant to the secondary effects.

(D) The city hereby adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of sexually oriented businesses, including the judicial opinions and reports related to such secondary effects.

(Ord. 2139, passed 6-4-12)

§ 110.02 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADULT BOOKSTORE or ADULT VIDEO STORE. A commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas. A principal business activity exists where the commercial establishment meets any one or more of the following criteria:

- (1) At least 35% of the establishment's displayed merchandise consists of said items;
- (2) At least 35% of the retail value (defined as the price charged to customers) of the establishment's displayed merchandise consists of said items;
- (3) At least 35% of the establishment's revenues derive from the sale or rental, for any form of consideration, of said items;
- (4) The establishment maintains at least 35% of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items shall be included in floor space maintained for the display, sale, or rental of said items);
- (5) The establishment maintains at least 500 square feet of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access the items shall be included in floor space maintained for the display, sale, or rental of the items);
- (6) The establishment regularly offers for sale or rental at least 2,000 of said items; or
- (7) The establishment regularly features said items and regularly advertises itself or holds itself out, in any medium, by using "adult," "adults-only," "XXX," "sex," "erotic," or substantially similar language, as an establishment that caters to adult sexual interests; or
- (8) The establishment maintains an adult arcade, which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting specified sexual activities or specified anatomical areas.

ADULT CABARET. A nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment that regularly features live conduct characterized by semi-nudity. No establishment shall avoid classification as an adult cabaret by offering or featuring nudity.

ADULT MOTION PICTURE THEATER. A commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas are regularly shown to more than five persons for any form of consideration.

CHARACTERIZED BY. Describing the essential character or quality of an item. As applied in this chapter, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

CITY. Elwood, Indiana.

EMPLOY, EMPLOYEE, and EMPLOYMENT. Describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, lessee, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

ESTABLISH or ESTABLISHMENT. Means and includes any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
- (3) The addition of any sexually oriented business to any other existing sexually oriented business.

FLOOR SPACE. The floor area inside an establishment that is visible or accessible to patrons for any reason, excluding restrooms.

HEARING OFFICER. An attorney, not otherwise employed by the city, who is licensed to practice law in Indiana, and retained to serve as an independent tribunal to conduct hearings under this chapter.

INFLUENTIAL INTEREST. Any of the following: (1) the actual power to operate the sexually oriented business or control the operation, management or policies of the sexually oriented business or legal entity which operates the sexually oriented business; (2) ownership of a financial interest of 30% or more of a business or of any class of voting securities of a business; or (3) holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, and the like) in a legal entity which operates the sexually oriented business.

LICENSEE. A person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In the case of an employee, it shall mean the person in whose name the sexually oriented business employee license has been issued.

NUDITY. The showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

OPERATOR. Any person on the premises of a sexually oriented business who manages, supervises, or controls the business or a portion thereof. A person may be found to be an operator regardless of whether the person is an owner, part owner, or licensee of the business.

PERSON. An individual, proprietorship, partnership, corporation, association, or other legal entity.

PREMISES. The real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a sexually oriented business license.

REGULARLY. The consistent and repeated doing of an act on an ongoing basis.

SEMI-NUDE or SEMI-NUDITY. The showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

SEMI-NUDE MODEL STUDIO. A place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. This definition does not apply to any place where persons appearing in a state of semi-nudity did so in a class operated:

- (1) By a college, junior college, or university supported entirely or partly by taxation;
- (2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
- (3) In a structure:
 - (a) Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and
 - (b) Where, in order to participate in a class a student must enroll at least three days in advance of the class.

SEXUAL DEVICE. Any three dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

SEXUAL DEVICE SHOP. A commercial establishment that regularly features sexual devices. This definition shall not be construed to include any pharmacy, drug store, medical clinic, any establishment primarily dedicated to providing medical or healthcare products or services, or any establishment that does not regularly advertise itself or hold itself out, in any medium, as an establishment that caters to adult sexual interests.

SEXUALLY ORIENTED BUSINESS. An adult bookstore or adult video store, an adult cabaret, an adult motion picture theater, a semi-nude model studio, or a sexual device shop.

SPECIFIED ANATOMICAL AREAS. Means and includes:

- (1) Less than completely and opaquely covered: human genitals, pubic region; buttock; and female breast below a point immediately above the top of the areola; and
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED CRIMINAL ACTIVITY. Any of the following specified crimes for which less than five years has elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

- (1) Rape, sexual assault, public indecency, statutory rape, rape of a child, sexual exploitation of a minor, indecent exposure;
- (2) Prostitution, patronizing prostitution, promoting prostitution;
- (3) Obscenity;
- (4) Dealing in controlled substances;
- (5) Racketeering, tax evasion, money laundering;
- (6) Any attempt solicitation, or conspiracy to commit one of the foregoing offenses; or
- (7) Any offense in another jurisdiction that, had the predicate act(s) been committed in Indiana, would have constituted any of the foregoing offenses.

SPECIFIED SEXUAL ACTIVITY. Any of the following:

- (1) Intercourse, oral copulation, masturbation or sodomy; or
- (2) Excretory functions as a part of or in connection with any of the activities described in division (1) above.

TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business. Means any of the following:

- (1) The sale, lease, or sublease of the business;
- (2) The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or
- (3) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

VIEWING ROOM. The room, booth, or area where a patron of a sexually oriented business would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video reproduction.

(Ord. 2139, passed 6-4-12)

§ 110.03 LICENSE REQUIRED.

(A) *Business license.* It shall be unlawful for any person to operate a sexually oriented business in the city without a valid sexually oriented business license.

(B) *Employee license.* It shall be unlawful for any person to be an employee, as defined in this chapter, of a sexually oriented business in the city without a valid sexually oriented business employee license, except that a person who is a licensee under a valid sexually oriented business license shall not be required to also obtain a sexually oriented business employee license.

(C) *Application.* An applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the office of the City Clerk-Treasurer a completed application made on a form provided by the Clerk-Treasurer. A sexually oriented business may designate an individual with an influential interest in the business to file its application for a sexually oriented business license in person on behalf of the business. The application shall be signed as required by division (D) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in this division (C), accompanied by the appropriate licensing fee:

(1) The applicant's full legal name and any other names used by the applicant in the preceding five years.

(2) Current business address or another mailing address for the applicant.

(3) Written proof of age, in the form of a driver's license, a picture identification document containing the applicant's date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.

(4) If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business.

(5) If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process.

(6) A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this chapter, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.

(7) A statement of whether any sexually oriented business in which an applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):

(a) Been declared by a court of law to be a nuisance; or

(b) Been subject to a court order of closure or padlocking.

(8) An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor area occupied by the business and a statement of floor area visible or accessible to patrons for any reason, excluding restrooms. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Applicants who are required to comply with the stage, booth, and/or room configuration requirements of this chapter shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of the applicable regulations. The Clerk-Treasurer may waive the requirements of this division (8) for a renewal application if the applicant adopts a legal description and a sketch or diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared. The information provided pursuant to this division (C) shall be supplemented in writing by certified mail, return receipt requested, to the Clerk-Treasurer within ten working days of a change of circumstances which would render the information originally submitted false or incomplete.

(D) *Signature.* A person who seeks a sexually oriented business employee license under this section shall sign the application for a license. If a person who seeks a sexually oriented business license under this section is an individual, he or she shall sign the application for a license as applicant. If a person who seeks a sexually oriented business license is other than an individual, each person with an influential interest in the sexually oriented business or in a legal entity that controls the sexually oriented business shall sign the application for a license as applicant. Each applicant must be qualified under this chapter and each applicant shall be considered a licensee if a license is granted.

(E) The information provided by an applicant in connection with an application for a license under this chapter shall be maintained by the office of the Clerk-Treasurer on a confidential basis, and the information may be disclosed only as may be required, and only to the extent required, by governing law or court order. Any information protected by the right to privacy as recognized by state or federal law shall be redacted prior to the disclosure.

(Ord. 2139, passed 6-4-12)

§ 110.04 ISSUANCE OF LICENSE.

(A) *Business license.* Upon the filing of a completed application for a sexually oriented business license, the Clerk-Treasurer shall immediately issue a temporary license to the applicant if the completed application is from a preexisting sexually oriented business that is lawfully operating in the city and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business license. The temporary license shall expire upon the final decision of the city to deny or grant an annual license. Within 20 days of the filing of a completed sexually oriented business license application, the Clerk-Treasurer shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The Clerk-Treasurer shall issue a license unless:

- (1) An applicant is less than 18 years of age.
- (2) An applicant has failed to provide information required by this chapter for issuance of a license or has falsely answered a question or request for information on the application form.
- (3) The license application fee required by this chapter has not been paid.
- (4) The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this chapter or is not in compliance with the locational requirements of any other part of the Code of Elwood.
- (5) Any sexually oriented business in which an applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):
 - (a) Been declared by a court of law to be a nuisance; or
 - (b) Been subject to an order of closure or padlocking.

(6) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this chapter.

(B) *Employee license.* Upon the filing of a completed application for a sexually oriented business employee license, the Clerk-Treasurer shall immediately issue a temporary license to the applicant if the applicant seeks licensure to work in a licensed sexually oriented business and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business employee license. The temporary license shall expire upon the final decision of the city to deny or grant an annual license. Within 20 days of the filing of a completed sexually oriented business employee license application, the Clerk-Treasurer shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The Clerk-Treasurer shall issue a license unless:

(1) The applicant is less than 18 years of age.

(2) The applicant has failed to provide information as required by this chapter for issuance of a license or has falsely answered a question or request for information on the application form.

(3) The license application fee required by this chapter has not been paid.

(4) Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):

(a) Been declared by a court of law to be a nuisance; or

(b) Been subject to an order of closure or padlocking.

(5) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this chapter.

(C) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time that the business is occupied by patrons or is open to the public. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing.

(Ord. 2139, passed 6-4-12)

§ 110.05 FEES.

The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as follows: \$100 for the initial fee for a sexually oriented business license and \$50 for annual renewal; \$50 for the initial sexually oriented business employee license and \$25 for annual renewal.

(Ord. 2139, passed 6-4-12)

§ 110.06 INSPECTION.

Sexually oriented businesses and sexually oriented business employees shall permit the Clerk-Treasurer and his or her agents to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this chapter, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the city to authorize reasonable inspections of the licensed premises pursuant to this chapter, but not to authorize a harassing or excessive pattern of inspections.

(Ord. 2139, passed 6-4-12)

§ 110.07 EXPIRATION AND RENEWAL OF LICENSE.

(A) Each license shall remain valid for a period of one calendar year from the date of issuance unless otherwise suspended or revoked. The license may be renewed only by making application and payment of a fee as provided in this chapter.

(B) Application for renewal of an annual license should be made at least 90 days before the expiration date of the current annual license, and when made less than 90 days before the expiration date, the expiration of the current license will not be affected.

(Ord. 2139, passed 6-4-12)

§ 110.08 SUSPENSION.

(A) The Clerk-Treasurer shall issue a written notice of intent to suspend a sexually oriented business license for a period not to exceed 30 days if the sexually oriented business licensee has knowingly or recklessly violated this chapter or has knowingly or recklessly allowed an employee or any other person to violate this chapter.

(B) The Clerk-Treasurer shall issue a written notice of intent to suspend a sexually oriented business employee license for a period not to exceed 30 days if the employee licensee has knowingly or recklessly violated this chapter.

(Ord. 2139, passed 6-4-12)

§ 110.09 REVOCATION.

(A) The Clerk-Treasurer shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if the licensee knowingly or recklessly violates this chapter or has knowingly or recklessly allowed an employee or any other person to violate this chapter and a suspension of the licensee's license has become effective within the previous 12-month period.

(B) The Clerk-Treasurer shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if:

(1) The licensee has knowingly given false information in the application for the sexually oriented business license or the sexually oriented business employee license;

(2) The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises of the sexually oriented business;

(3) The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises of the sexually oriented business;

(4) The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked;

(5) The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity or specified criminal activity to occur in or on the premises of the sexually oriented business;

(6) The licensee has knowingly or recklessly allowed a person under the age of 21 years to consume alcohol on the premises of the sexually oriented business; or

(7) The licensee has knowingly or recklessly allowed a person under the age of 18 years to appear in a semi-nude condition or in a state of nudity on the premises of the sexually oriented business.

(C) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.

(D) When, after the notice and hearing procedure described in this chapter, the city revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for one year from the date revocation becomes effective.

(Ord. 2139, passed 6-4-12)

§ 110.10 HEARING; LICENSE DENIAL, SUSPENSION, REVOCATION; APPEAL.

(A) When the Clerk-Treasurer issues a written notice of intent to deny, suspend, or revoke a license, the Clerk-Treasurer shall immediately send the notice, which shall include the specific grounds under this chapter for the action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the Clerk-Treasurer for the respondent. The notice shall also set forth the following: the respondent shall have ten days after the delivery of the written notice to submit, at the office of the Clerk-Treasurer, a written request for a hearing. If the respondent does not request a hearing within ten days, the Clerk-Treasurer's written notice shall become a final denial, suspension, or revocation, as the case may be, on the 30th day after it is issued, and shall be subject to the provisions of division (B) of this section.

(1) If the respondent does make a written request for a hearing within the ten days, then the Clerk-Treasurer shall, within ten days after the submission of the request, send a notice to the respondent indicating the date, time, and place of the hearing. The hearing shall be conducted not less than ten days nor more than 20 days after the date that the hearing notice is issued. The city shall provide for the hearing to be transcribed.

(2) At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the Clerk-Treasurer's witnesses. The Clerk-Treasurer shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The Hearing Officer shall issue a final written decision, including specific reasons for the decision pursuant to this chapter, to the respondent within five days after the hearing.

(3) If the decision is to deny, suspend, or revoke the license, the decision shall advise the respondent of the right to appeal the decision to a court of competent jurisdiction, and the decision shall not become effective until the 30th day after it is rendered. If the Hearing Officer's decision finds that no grounds exist for denial, suspension, or revocation of the license, the Hearing Officer shall, contemporaneously with the issuance of the decision, order the Clerk-Treasurer to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the Clerk-Treasurer shall contemporaneously therewith issue the license to the applicant.

(B) If any court action challenging a licensing decision is initiated, the city shall prepare and transmit to the court a transcript of the hearing within 30 days after receiving written notice of the filing of the court action. The city shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any sexually oriented business that is lawfully operating as a sexually oriented business, or any sexually oriented business employee that is lawfully employed as

a sexually oriented business employee, on the date on which the completed business or employee application, as applicable, is filed with the Clerk-Treasurer: upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the city's enforcement of any denial, suspension, or revocation of a temporary license or annual license, the Clerk-Treasurer shall immediately issue the respondent a provisional license. The provisional license shall allow the respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the city's enforcement.

(Ord. 2139, passed 6-4-12)

§ 110.11 TRANSFER OF LICENSE.

A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application.

(Ord. 2139, passed 6-4-12)

§ 110.12 HOURS OF OPERATION.

No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day.

(Ord. 2139, passed 6-4-12)

§ 110.13 REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS ON PREMISES.

(A) A person who operates or causes to be operated a sexually oriented business which exhibits in a booth or viewing room on the premises, through any mechanical or electronic image-producing device, a film, video cassette, digital video disc, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.

(1) Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain equipment for displaying films, video cassettes, digital video discs, or other video reproductions. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions

sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Clerk-Treasurer may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.

(3) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

(4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no specified sexual activity occurs in or on the licensed premises.

(5) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:

- (a) That the occupancy of viewing rooms less than 150 square feet is limited to one person.
- (b) That specified sexual activity on the premises is prohibited.
- (c) That the making of openings between viewing rooms is prohibited.
- (d) That violators will be required to leave the premises.
- (e) That violations of these regulations are unlawful.

(6) It shall be the duty of the operator to enforce the regulations articulated in divisions (5)(a) through (e) above.

(7) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed 32 square feet of floor area. If the premises has two or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose, excluding restrooms, from at least one of the operator's stations. The view required in this division must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any

patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this division remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

(8) It shall be the duty of the operator to ensure that no porous materials are used for any wall, floor, or seat in any booth or viewing room.

(B) It shall be unlawful for a person having a duty under divisions (A)(1) through (A)(8) to knowingly or recklessly fail to fulfill that duty.

(C) No patron shall knowingly or recklessly enter or remain in a viewing room less than 150 square feet in area that is occupied by any other patron.

(D) No patron shall knowingly or recklessly be or remain within one foot of any other patron while in a viewing room that is 150 square feet or larger in area.

(E) No person shall knowingly or recklessly make any hole or opening between viewing rooms.
(Ord. 2139, passed 6-4-12)

§ 110.14 LOITERING; EXTERIOR LIGHTING AND MONITORING, AND INTERIOR LIGHTING REQUIREMENTS.

(A) It shall be the duty of the operator of a sexually oriented business to: (i) ensure that at least two conspicuous signs stating that no loitering is permitted on the premises are posted on the premises; (ii) designate one or more employees to monitor the activities of persons on the premises by visually inspecting the premises at least once every 90 minutes or inspecting the premises by use of video cameras and monitors; and (iii) provide lighting to the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. The lighting shall be of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than one foot candle as measured at the floor level. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.

(B) It shall be the duty of the operator of a sexually oriented business to ensure that the interior premises shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than five foot candles as measured at the floor level and the illumination must be maintained at all times that any customer is present in or on the premises.

(C) No sexually oriented business shall erect a fence, wall, or similar barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way.

(D) It shall be unlawful for a person having a duty under this section to knowingly or recklessly fail to fulfill that duty.

(Ord. 2139, passed 6-4-12)

§ 110.15 REMEDIES.

(A) Any premises on which repeated violations of this chapter occur shall constitute a public nuisance. For purposes of this chapter, repeated violations shall mean three or more violations of this chapter within a one year period dating from the time of any violation.

(B) The city's legal counsel is hereby authorized to institute civil proceedings to enjoin, restrain, or correct violations of this chapter. The proceedings shall be brought in the name of the city, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such proceedings as may be authorized by other provisions of this chapter, or any of the laws in force in the city, or to exempt anyone violating this code or any part of the laws from any liability which may be incurred.

(Ord. 2139, passed 6-4-12)

§ 110.16 APPLICABILITY OF CHAPTER TO EXISTING BUSINESSES.

All preexisting sexually oriented businesses lawfully operating in the city in compliance with all state and local laws prior to the effective date of this chapter, and all sexually oriented business employees working in the city prior to the effective date of this chapter, are hereby granted a de facto temporary license to continue operation or employment for a period of 90 days following the effective date of this chapter. By the end of the 90 days, all sexually oriented businesses and sexually oriented business employees must conform to and abide by the requirements of this chapter.

(Ord. 2139, passed 6-4-12)

§ 110.17 PROHIBITED CONDUCT.

(A) No patron, employee, or any other person shall knowingly or intentionally, in a sexually oriented business, appear in a state of nudity or engage in a specified sexual activity.

(B) No person shall knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six feet from all patrons and on a stage at least 18 inches from the floor in a room of at least 600 square feet.

(C) No employee who regularly appears semi-nude in a sexually oriented business shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business.

(D) No person shall possess, use, or consume alcoholic beverages on the premises of a sexually oriented business.

(E) No person shall knowingly or recklessly allow a person under the age of 18 years to be or remain on the premises of a sexually oriented business.

(F) No operator or licensee of a sexually oriented business shall knowingly violate the regulations in this section or knowingly or recklessly allow an employee or any other person to violate the regulations in this section.

(G) A sign in a form to be prescribed by the Clerk-Treasurer, and summarizing the provisions of divisions (A), (B), (C), (D), and (E), shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry. No person shall cover, obstruct, or obscure the sign.

(Ord. 2139, passed 6-4-12)

§ 110.18 SCIENTER REQUIRED TO PROVE VIOLATION OR BUSINESS LICENSE LIABILITY.

This chapter does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a reckless mental state is necessary to establish a violation of a provision of this chapter. Notwithstanding anything to the contrary, for the purposes of this chapter, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for purposes of finding a violation of this chapter, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed the act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

(Ord. 2139, passed 6-4-12)

§ 110.19 FAILURE OF CITY TO MEET DEADLINE TO RISK APPLICANT/LICENSEE RIGHTS.

In the event that a city official is required to act or to do a thing pursuant to this chapter within a prescribed time, and fails to act or to do such thing within the time prescribed, the failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the city official under this chapter, and not completed in the time prescribed, includes approval of condition(s) necessary for approval by the city of an applicant or licensee's application for a sexually oriented business license or a sexually oriented business employee's license (including a renewal), the license shall be deemed granted and the business or employee allowed to commence operations or employment the day after the deadline for the city's action has passed.

(Ord. 2139, passed 6-4-12)

§ 110.20 LOCATION OF SEXUALLY ORIENTED BUSINESSES.

(A) It shall be unlawful to establish, operate, or cause to be operated a sexually oriented business in Elwood, unless the sexually oriented business is at least:

(1) Three hundred feet from any parcel occupied by another sexually oriented business or by a business licensed by the state to sell alcohol at the premises; and

(2) Three hundred feet from any parcel zoned residential or occupied by a house of worship, public or private elementary or secondary school, public park, licensed child day care center, or any residence.

(B) For the purpose of this section, measurements shall be made in a straight line in all directions without regard to intervening structures or objects, from the closest part of any structure, including signs and roof overhangs, used in conjunction with the sexually oriented business to the closest point on a property boundary or right-of-way associated with any of the land use(s) identified in division (A) above. The use of land in adjacent jurisdictions shall not disqualify any location with the city from being available to a sexually oriented business.

(Ord. 2139, passed 6-4-12)

CHAPTER 111: AMUSEMENTS

Section

General Licensing of Machines and Locations

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GENERAL LICENSING OF MACHINES AND LOCATIONS

§ 111.01 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AMUSEMENT LOCATION. Any public room or area containing amusement machines.

AMUSEMENT LOCATION PERMIT. A license or permit authorized by the Board of Public Works and Safety for any public room or area containing amusement machines, pool tables, billiard tables, shuffleboard tables or devices being displayed upon the premises for which it shall be issued.

AMUSEMENT MACHINE. Any machine or device designed or modified to be operated by a coin, coins or tokens or for which charge is made for the operation thereof, except as otherwise provided

herein. A machine or device used exclusively for the vending of merchandise of a tangible nature shall not be deemed an **AMUSEMENT MACHINE**. Outdoor baseball batting machines shall not be deemed to be **AMUSEMENT MACHINES**.

AMUSEMENT MACHINE PERMIT. Any sort of tag, badge, plate emblem or decal which may be issued by the Clerk-Treasurer and required to be used or displayed by a licensee.

BOWLING ALLEY or **BOWLING MACHINE.** Bowling alleys, pins and ball alleys, pin and ball alley machines, box ball alleys and all alleys of similar character. A machine or device used exclusively for bowling shall not be deemed an amusement machine.

BUSINESS. All kinds of vocations, occupations, professions, enterprises, establishments and all other kinds of activities and matters together with all devices, vehicles and appurtenances used therein, which are conducted directly or indirectly, on any premises within this city or elsewhere within the jurisdiction of this city.

CIGARETTE VENDING MACHINE. Any automatic vending machine commercially used for the sale of cigarettes or cigarettes and matches and controlled by the insertion of a coin or coins. A machine or device used for the vending of cigarettes shall not be deemed an amusement machine.

JUKEBOX. A machine or device used for the emission of songs or music and shall not be deemed an amusement device.

LICENSE. The word **LICENSE** and the word “permit” shall give the privilege of carrying on a specified business within the city; however, both permits and **LICENSES** may be granted where specifically authorized under this subchapter.

LICENSEE. Includes the word “permittee”. The person to whom a license has been granted and his agents and employees.

MASTER VENDOR. A person, corporation or entity, who sells, leases or rents any amusement machine whether on his own behalf or for another, whose principal place of business is within the city.

OUTSIDE MASTER VENDOR. A person, corporation or entity located outside the city who sells, leases or rents any amusement machines whether on his own behalf or for another and whose principal place of business is outside the city.

POOL or **BILLIARD TABLE.** A table used for any form of the games commonly referred to as pool or billiards and includes any table of any size, the top of which is surrounded by an elastic ledge and consists of impelling balls by means of sticks or cues and which is operated by any coin, coins or tokens or for which a charge is made for the operation or use thereof. A machine or device used exclusively for pool or billiards shall not be deemed an amusement machine.

PREMISES. All lands, structures, places, the equipment and appurtenances connected with or used in any business, and also any personal property which is either affixed to or otherwise used in connection with any business.

PRIMA FACIE EVIDENCE OF DOING BUSINESS. The placing or permitting of any business sign or notice on or within any premises or place; any publication of the opening or conduct of any business by advertisement in any newspaper or other publication, by any poster, circular, letter, card or by any method attracting public notice thereto; by soliciting business, by acquiring or using any premises in the city for business purposes and any premises where the business is subject to a license or permit therefor, shall be prime facie evidence of liability of the person to obtain and pay for the license or permit as provided by this chapter.

PUBLIC WELFARE. The prosperity, well-being and convenience of the inhabitants of the city, whether as a whole or in some limited group.

SHUFFLEBOARD. Any table or device where a metal or any other surface of the table or device where a metal or any other type puck is propelled on the surface of a table or device from one end to the other. A table or device used exclusively for **SHUFFLEBOARD** shall not be deemed an amusement machine.

TEMPORARY AMUSEMENT LOCATION PERMIT. Any public room or area containing four or more amusements which will operate for a period of not more than 14 days in any permit period and shall not be renewable in any permit period and shall not be renewable in the permit period.

TEMPORARY AMUSEMENT MACHINE PERMIT. Any sort of tag, badge, plate, emblem or decal which may be issued by the Clerk-Treasurer and required to be used or displayed by a licensee for an amusement machine which will operate for a period of not more than 14 days in any permit period and shall not be renewable in the permit period.

(Ord. 1559, passed 7-11-83)

§ 111.02 LICENSE AND PERMIT APPLICATION; FORMS.

(A) The application for an amusement location license, a master vendor's license and amusement machine permits shall be made in the form and contain the information as the Board of Public Works and Safety may prescribe. The requirements for all permits for machines and devices shall be determined by the Board of Public Works and Safety.

(B) The application for a license to own or operate an amusement location and application for vendor's license shall contain the following information:

- (1) Name of the applicant and, if a partnership or corporation, the state in which organized;
- (2) Residence address of applicant;

(3) Business address of applicant;

(4) The age and citizenship of the applicant if an individual, of all partners if a partnership or joint venture or of the manager and officers, if a corporation;

(5) The name and residence address of the owner of the premises proposed for licensing as to amusement location;

(6) The street address of the amusement location to be licensed;

(7) The location, time and duration of any other amusement location operated by the applicant presently or at any previous time, and whether the license was revoked;

(8) The number of pool or billiard tables and amusement machines or devices that are to be located on the premises to be licensed;

(9) The name of the manager or operator if the person is not the applicant;

(10) The name and address of the master vendor or vendors;

(11) A site location drawing or floor plan of the premises where the business is to be conducted with the same drawn to scale with exits clearly indicated for each amusement location. A license shall be obtained for each amusement location.

(Ord. 1559, passed 7-11-83)

§ 111.03 INVESTIGATION OF APPLICANT.

Before a license is issued, an investigation of the character of the applicant or applicants and the officers or manager of the business shall be made. The license may be denied if it is found that any of the persons named in the application have previously been convicted of an infraction connected with any amusement location where the license has been revoked, or where any of the provisions of this subchapter applicable to them have been violated or if the amusement location sought to be licensed does not comply in every way with the chapter applicable thereto. All licensees shall be no less than 18 years of age. If an application is denied, the applicant for the license or permit shall be notified in writing of the reasons for rejection and shall have the right to appeal.

(Ord. 1559, passed 7-11-83)

§ 111.04 LICENSE AND PERMIT TERMS AND FEES.

(A) *Transfer of license prohibited.* The annual license or permit shall be for the period from January through December 31 of each year or for any fraction thereof from date of issue and shall expire upon December 31 of each year. The license for the amusement location shall not be transferrable.

(B) *License and/or permit fees.*

Type of license	Fee
Amusement location permit	\$25
Master vendor's license	\$100
Outside master vendor's license	\$100
Amusement machine permit	
One machine	\$25
Two machines	\$50
Three machines	\$75
Four or more machines	\$300
Temporary amusement location permit	\$75
Pool and billiards tables, shuffleboard (per table)	\$10
Temporary amusement machine permit	\$5

(C) *Permit or license display.* Every public room or location used in connection with any business and where an amusement machine, pool table, billiard table or shuffleboard table or device is located shall have at all times prominently displayed upon the premises an amusement location permit or certification issued by the Clerk-Treasurer and a permit shall be securely attached to the certificate or permit for each amusement machine, pool table, billiard table, shuffleboard table or device upon the premises for which the certificate or permit was issued.

(Ord. 1559, passed 7-11-83) Penalty, see § 10.99

§ 111.05 INSPECTIONS; RIGHT OF ENTRY.

(A) All businesses applying for an amusement location permit shall be inspected by the Building Inspector for the city and the Inspection Department of the Elwood Fire Department before the permit is issued.

(B) All employees of the city who have been authorized by the Board of Public Works and Safety to make inspections may enter any place of business of a licensee under this subchapter to make inspections conducted in a reasonable manner. The Board of Public Works and Safety may call upon city employees having police power to enforce the provisions of this subchapter.

(C) All Boards and officials of the city shall issue the necessary orders to their respective employees to conduct the inspections necessary to meet the requirements pursuant to this subchapter.

(D) All violations of the subchapter as observed during any inspection of a licensed business or observed by a police officer, fire fighter or other city official during the course of their employment shall be immediately reported to the Clerk-Treasurer or any of the boards and officials for the city as they deem proper.

(Ord. 1559, passed 7-11-83)

§ 111.06 UNLAWFUL ACTS.

(A) It shall be unlawful to own or operate any location fitting the definition of an amusement location as stated in this subchapter without an amusement location license issued by the Clerk-Treasurer.

(B) It shall be unlawful for any owner to display, exhibit, expose or permit to be displayed, exposed or exhibited any amusement machine without having procured from the Clerk-Treasurer a permit for each amusement machine or device.

(C) It shall be unlawful to permit the operation in any public place of any amusement machine without an amusement machine permit being displayed upon the same as issued by the Clerk-Treasurer.

(D) It shall be unlawful for any person, corporation or entity to act as master vendor or outside master vendor, without the proper license issued by the Clerk-Treasurer for the city.

(E) It shall be unlawful for the master vendor or outside master vendor to possess an amusement machine, intended for sale or placement without a proper license.

(F) It shall be unlawful for a person subject to compulsory school attendance to operate or be allowed to operate an amusement device during the hours as would constitute a violation of the laws of the state requiring compulsory school attendance.

(G) It shall be unlawful for a person who has not reached the age of 18 years to be present in an amusement location after the hours established by state statute or city ordinance for juvenile curfew unless accompanied by a parent or legal guardian.

(H) It shall be unlawful to operate or allow to be operated any amusement machine, video device and/or mechanical devices located within range of any police and/or fire department radio receiver equipment, which creates an interference with the reception or operation of the equipment. All amusement machines, video devices and/or mechanical devices shall have proper grounding and/or filtering devices to prevent machines and devices from interfering with police or fire department equipment. Machines and/or devices that are discovered to be interfering with any police or fire department equipment shall be disconnected and not allowed to operate until the machine or device is properly grounded and/or had a filtering device installed which effectively terminates the interference.

(I) There shall be no amusement devices located on or in any city property nor sponsored by any city department or board, nor shall a license be issued therefor.

(Ord. 1559, passed 7-11-83) Penalty, see § 10.99

SPECIFIC PROVISIONS

§ 111.20 CIRCUS AND THEATER EXHIBITIONS.

(A) *License required.* It shall be unlawful for any person to run, exhibit, operate or conduct any circus, menagerie theater, panorama, musical or vaudeville entertainment, moving picture show or any show or exhibit of any character for hire in the city without having procured a license so to do as hereinafter provided. For concerts, lectures, musicals, entertainments and other like performances, if all the gross profits are devoted solely and exclusively to religious, charitable, literary or scientific purposes in the city or likewise solely and exclusively for the benefit of any fraternal order in the city, no license shall be required. ('66 Code, § 5-4-3-1)

(B) *Exemption.*

(1) Any person shall be exempt from the payment of license fees to the city for the running, exhibiting, operating or conducting of concerts, musical or vaudeville entertainments, merry-go-rounds, ferris wheels and other riding devices, and exhibiting of natural curiosities museums, panorama, feats of tumbling, slight of hand or other performances, if the same are run, exhibited, operated, conducted or shown under the auspices of and under contract with the Elwood Glass Festival.

(2) The exemption of payment of license fees shall apply only for and during the period of time that the annual Elwood Glass Festival is conducted in the city and under the direction of the Elwood Glass Festival.

(3) Before any person shall be exempt under this section from the payment of license fees to the city, it must first be shown by them that they are operating under the auspices of the Elwood Glass Festival, and have executed a written contract therein, all of which has met the approval of the legally constituted officials of the Elwood Glass Festival.

('66 Code, § 5-4-3-2)

(C) *Fees.*

(1) Licenses shall be granted by the Clerk-Treasurer upon the payment into the city treasury. License fees are as follows:

(a) For each circus, menagerie, hippodrome or wild west show, \$75 for each day. Where both a circus and menagerie are exhibited under the same management, for one admission, one fee only shall be charged.

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(b) For each side show where separate admission is charged, \$5 per day.

(c) For each theater, moving picture show, musical or vaudeville entertainment regularly conducted in any building or permanent enclosure in the city, \$25 for each year.

(d) For each transient theater, skating rink, merry-go-round, ferris wheel or other riding device, musical, vaudeville show, exhibition of natural curiosities, museum, panorama, feats of tumbling, slight of hand or other performances under a tent or in a room temporarily rented or occupied for that purpose, \$5 for each day and \$20 dollars per week.

(e) For each lung tester, lifting machine, striking machine, ball rack, cane rack, knife rack or other similar device, \$2 for each day.

(2) All moneys received under this section, for use and occupancy of the city park, is hereby set apart for the use of the City Park Fund and is made a part thereof.

('66 Code, § 5-4-3-3)

(Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 111.21 CARNIVALS AND STREET FAIRS.

(A) It shall be unlawful for any person to run, exhibit, operate or conduct any carnival exhibition or street fair for hire in the city, unless at a place or places in the city approved by the Common Council and unless a license so to do is first procured as hereinafter provided.

(B) The terms “carnival exhibition” and “street fair” shall not extend to or cover any indoor fair or similar indoor exhibition given by any local charitable, religious, literary, educational or scientific organization or fraternal order in or on its own premises or buildings.

('66 Code, § 5-4-4-1)

(C) A license shall be granted by the Clerk-Treasurer upon the payment of a license fee of \$250 for any continuous period desired by the applicant for not longer than six days. ('66 Code, § 5-4-4-2)

(Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 111.22 POOL HALLS AND BILLIARDS.

(A) Any room where pool or billiards are played for gain shall be one single room. The room shall be constructed and arranged so as to its front and interior arrangement so that it may be viewed throughout its entire extent or space at all hours when games are played by any person looking through the front windows or glass doors of the room from the street or highway on which the room fronts and all screens and blinds or other obstructions which would obstruct the view shall be removed during the hours when games of billiards or pool are played. ('66 Code, § 5-4-5-1)

(B) Any person keeping, owning or operating a place within the city limits where billiards or pool are played for hire, shall close the same for the night at 11:00 p.m. of each day, except that he may keep the place open until 12:00 a.m. on the seventh day of each week, at which hour and time, the person shall raise all screens and remove obstructions, so as to give an unobstructed view of the interior, and shall require all other persons to vacate the premises, and shall not open the same, until 5:00 a.m., the following day. ('66 Code, § 5-4-5-2)

(C) At the hours of 11:00 p.m. and 12:00 a.m. and as provided in division (B) above, it shall be the duty of every person who is keeping or assisting in keeping any room where pool or billiards are played for gain, within the city, to eject therefrom, every person, not regularly employed therein, to close and lock the doors thereof secure, and permit no entrance thereto, between those hours and the hour of 5:00 a.m., of the following day. It shall be the duty of every person found in any place, between the forbidden hours, to depart therefrom when requested to do so. ('66 Code, § 5-4-5-3)

(D) A license fee of \$10 shall hereafter be charged and collected by the Clerk-Treasurer per annum for each and every pool table and for each and every billiard table kept and exhibited to be played upon for hire or gain within the corporate limits of the city. The Clerk-Treasurer shall charge a fee of \$.50 for the issuing of each license, and any number of tables belonging to the same person, firm or corporation may be licensed in the same license. ('66 Code, § 5-4-5-4)

(E) It is unlawful for any person to keep and exhibit to be played upon for hire or gain any pool or billiard table within the corporate limits of the city without having first obtained a license as herein provided. ('66 Code, § 5-4-5-5)
(Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 111.23 BOWLING ALLEYS.

(A) A license fee of \$5 per month, \$10 per every three months and \$25 per year shall hereafter be charged and collected by the Clerk-Treasurer for every bowling alley or box ball alley operated within the corporate limits of the city. For the issuing of the license, the Clerk-Treasurer shall charge a fee of \$.50. ('66 Code, § 5-4-6-1)

(B) It is unlawful for any person(s) to operate any bowling alley or box ball alley within the city without first having procured a license as herein provided. ('66 Code, § 5-4-6-2)
(Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 111.24 SHOOTING GALLERIES.

(A) It is hereby made unlawful for any person(s) to operate any shooting gallery within the city without first having obtained a license as herein provided. ('66 Code, § 5-4-7-2)

(B) A license fee of \$5 per month, \$10 per every three months and \$25 per year shall hereafter be charged and collected by the Clerk-Treasurer for every shooting gallery operated within the corporate limits of the city, and the Clerk-Treasurer shall charge a fee of \$.50 for the issuing of the license. ('66 Code, § 5-4-7-1)

(Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 111.25 PINBALL MACHINES.

(A) *Definition.* For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

PINBALL MACHINE. A table with a slanting surface, which is equipped with a plunger or similar device, which the player manipulates, striking therewith some ball or similar object, which are knocked toward the opposite end of the table, the ball rebounding and rolling back toward the opposite end of the table, with landings that are directed obstructions on the surface encountered by the balls on their return, those obstructions being bulbs or other sorts of buffers, which when touched by the ball light up or indicate a touching of the obstruction, which in turn has a bearing on whether the player shall attain a prescribed result or score. The player deposits a coin in the provided place for the purpose before commencing, and if the player succeeds in bringing about a prescribed result or score within a certain number of allotted shots or balls or sequence of electronic flashes or turns of a reel which the player is allowed for his deposited coin, the player is permitted a replay of the machine one or more times, or is entitled to some award. ('66 Code, § 5-4-2-1)

(B) *Prohibited operations.* It shall be unlawful for any person, firm or corporation their agents or employees, to operate, permit to be operated or permit to be offered or available for operation, any pinball machine within the city. ('66 Code, § 5-4-2-2)

(C) *Impoundment.* In addition to any fines or penalties provided for elsewhere in this section, any pinball machine found to be in operation or available for operation within the city shall be impounded by the Elwood Police Department until the time as a court of competent jurisdiction may order its destruction or other disposition. ('66 Code, § 5-4-2-3)

(Ord. 1172, passed 10-3-66) Penalty, see § 10.99

CHAPTER 112: CABLE TELEVISION

Section

Rate Regulations

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RATE REGULATIONS**§ 112.01 ADOPTION OF FCC REGULATIONS.**

The Common Council hereby adopts the rules and regulations set forth by the Federal Communications Commission pursuant to Section 623(b) of the *Cable Television Consumer Protection and Competition Act of 1992* (47 USC 543(b)) for the review of the basic service tier of cable television services and equipment necessary for the provision of the service tier. The rules and regulations promulgated by the Federal Communications Commission (FCC) are found at 47 USC 623(b) and which are incorporated herein and made a part of this subchapter.
(Ord. 1807, passed 11-10-93)

§ 112.02 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BASIC SERVICE TIER OF CABLE TELEVISION SERVICES. A separately available service tier to which subscription is required for access to any other tier of service, including as a minimum, but not limited to, all signals of domestic television broadcast stations provided to any subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of the station, regardless of how the signal is ultimately received by the cable system) any public, educational, and governmental programming required by the franchise to be carried on the basic tier, and any additional video programming signals or service added to the basic tier by the cable operator.

EQUIPMENT NECESSARY TO PROVIDE THE BASIC TIER OF SERVICE. Those items of associated requirement necessary for the reception of basic cable service by a subscriber, including but not limited to, converter boxes, remote control units, additional outlets and installations.
(Ord. 1807, passed 11-10-93)

§ 112.03 PUBLIC HEARINGS.

The city shall provide the grantee of the cable television franchise, the public and interested parties with an opportunity to be heard at a public hearing before the city upon 14 days written notice to the grantee of the cable television franchise of the time and place of the public hearing provided further that the notice shall indicate that the purpose of the public hearing is to receive the views of the grantee and interested parties on issues pertaining to regulation of the basic service tier of cable television services and equipment necessary to provide the basic tier of service; and provided further that notice of the public hearing shall be published in a local newspaper of general circulation at least ten days before the

date of this hearing, and provided further, that an agenda for the public hearing shall be posted in a public place at least seven days prior to the public hearing.

(Ord. 1807, passed 11-10-93)

§ 112.04 NOTIFICATION OF REGULATIONS.

Upon the adoption of this subchapter and the certification of the city and the Federal Communications Commission, the city shall immediately notify the cable operator by certified mail, return receipt requested, that the city intends to regulate subscriber rates charged for the basic service tier and associated equipment as authorized by the *Cable Television Consumer Protection and Competition Act of 1992*. Upon receipt of the notice by the city, the cable operator shall, within 30 days, file with the city its current rates for the basic service tier and associated equipment along with any additional documentation justifying the reasonableness of its rates.

(Ord. 1807, passed 11-10-93)

§ 112.05 REVIEW PERIOD FOR RATES.

(A) The city shall establish that the period for review of rates of the basic service tier of cable television services and the equipment necessary to provide the basic tier of service shall be 30 days from the submission by the grantee of the cable television franchise of Federal Communications Commission Form 393. If the Common Council of the city takes no action within 30 days from the date the cable operator files its basic cable rates with the city, the proposed rates will continue in effect.

(B) In the event that additional time for review of the Federal Communications Commission Form 393 submitted by grantee is necessary, the Common Council of the city or their designee shall issue a brief written order prior to the end of the 30-day review period, with a copy of the order to be sent by certified United States Mail to the grantee, providing for an additional 90-day period for review of rates of the basic service tier and the equipment necessary to provide the basic tier of service. During the extended review period and before taking action on the proposed rate, the Common Council of the city shall hold at least one public hearing in which interested citizens may express their view and record objections.

(C) The city shall establish that the period for review of the basic service tier of cable television services and the equipment necessary to provide the basic tier of service shall be 90 days from the submission by the grantee of information and forms prescribed by the Federal Communications Commission for a showing of cost-of-service, as defined by the Federal Communications Commission.

(D) In the event that additional time for review of the cost of service showing submitted by the grantee is necessary, the Common Council of the city or their designee shall issue a brief written order prior to the end of the 90-day review period with a copy of the order to be sent by certified United States mail to the grantee, providing for an additional 150-day period for review of rates of the basic service tier and the equipment necessary to provide the basic tier of service. During the extended review period

and before taking action on the proposed rate, the Common Council of the city shall hold at least one public hearing in which interested citizens may express their views and record objections.

(Ord. 1807, passed 11-10-93)

§ 112.06 FORMAL RESOLUTION.

(A) Upon completion of its review of the proposed rates for the basic service tier of cable television services and the equipment necessary to provide the basic tier of service, the Common Council of the city shall adopt its decision by formal resolution. The resolution shall indicate the reasons for the decision. Upon passage of the resolution, the city shall make available copies of the resolution to the public.

(B) In the event that the cable operator's proposed rates exceed the reasonable rates standard as established by the Federal Communications Commission in its rules and regulations, the Common Council of the city shall order the rates reduced by rollbacks or refunds to subscribers, in the manner so prescribed by the Federal Communications Commission.

(Ord. 1807, passed 11-10-93)

§ 112.07 DISCLOSURE OF INFORMATION.

In considering information provided by the grantee as a part of review of his rates for the basic service tier of cable television services and the equipment necessary to provide the basic tier of service, the city shall not disclose to the public the content of any records, forms, reports, calculations or other documents as provided which the grantee has indicated as being of a proprietary interest or constituting a trade secret in nature. The municipal officer responsible for administration of the *Indiana Freedom of Information Act* shall retain the right to determine the validity of the grantee's claim of proprietary interest or trade secrecy in accordance with the provisions of the *Indiana Freedom of Information Act*.

(Ord. 1807, passed 11-10-93)

§ 112.08 REFUNDS.

The city may order the cable operator to refund to subscribers a portion of previously paid rates under the following circumstances:

(A) A portion of the previously paid rates have been determined to be in excess of the permitted basic cable service tier charge or above the actual cost of equipment; or

(B) The cable operator has failed to comply with a valid rate order issued by the city.

(Ord. 1807, passed 11-10-93)

§ 112.09 COMPLIANCE BY FRANCHISEE REQUIRED.

Failure by the cable operator to comply with the terms and conditions established by this subchapter, including the rules and regulations promulgated by the Federal Communications Commission, shall constitute a violation of the cable television franchise ordinances of the city.
(Ord. 1807, passed 11-10-93) Penalty, see § 10.99

FRANCHISE PROVISIONS**§ 112.20 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number.

BASIC CATV SERVICE. The distribution of broadcast television signals by the company.

CABLE TELEVISION SYSTEM. A system composed of, without limitation, antenna, cables, wires, lines, towers, wave guides or any other conductors, converters, equipment or facilities designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing by coaxial cable audio and/or visual radio, television, electronic or electrical signals to and from persons, subscribers and locations in the franchise area.

CATV. A cable television system as hereinafter defined.

CITY. The City of Elwood, Indiana.

COMPANY. The grantee of rights under this subchapter.

COUNCIL. The governing body of the city.

FRANCHISE AREA. That area within the corporate limits of the city.

GROSS ANNUAL BASIC SUBSCRIBER REVENUES. Any and all compensation and other consideration received directly by the company from subscribers in payment for regularly furnished basic CATV service. ***GROSS ANNUAL BASIC SUBSCRIBER REVENUE*** shall not include any taxes on services furnished by the company imposed directly on any subscriber or user by any city, state or other governmental unit and collected by the company for the governmental unit.

PERSON. Any person, firm, partnership, association, corporation, company or organization of any kind.

PROPERTY OF COMPANY. All property owned, installed or used by the company in the conduct of a cable television business in the city.

STREET. The surface of and the space above and below any public street, right of way, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, drive, communications or utility easement, now or hereafter existing as such within the franchise area.

SUBSCRIBER. Any person or entity receiving basic CATV service.
(Ord. 1605, passed 1-7-85)

§ 112.21 GRANT OF AUTHORITY.

There is hereby granted by the city to the company the right and privilege to engage in the business of operating and providing a CATV system in the city, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any public street, public way and public place, now laid out or dedicated and all extensions thereof and additions thereto in the franchise area such poles, wires, cable, conductors, ducts, conduit vaults, manholes, amplifiers, appliances, attachments and other property as may be necessary and appurtenant to the CATV system; and, in addition, so to use, operate and provide similar facilities or properties rented or leased from other persons, firms or corporations including but not limited to any public utility or other grantee franchised or permitted to do business in the city.
(Ord. 1605, passed 1-7-85)

§ 112.22 NON-EXCLUSIVE GRANT.

The right to use and occupy the street and other public ways for the purpose herein set forth, shall not be exclusive, and the city reserves the right to grant a similar use in the streets and other public ways to any other person.
(Ord. 1605, passed 1-7-85)

§ 112.23 TERM OF FRANCHISE.

The term of the franchise is hereby renewed, amended, and thereby extended by ten years to expire on January 1, 2015 (“expiration date”). Thereafter, the grantee may exercise its option to automatically renew the franchise for an additional five years upon written notice to the city at least 30 months prior to the expiration of the foregoing term provided that the grantee is then in material compliance with the terms and conditions contained in the franchise agreement.
(Ord. 1605, passed 1-7-85; Am. Ord. 2020, passed 3-7-05)

§ 112.24 CONDITIONS OF STREET OCCUPANCY; SAFETY.

(A) All transmission and distribution structures, lines and equipment erected by the company within the franchise area shall be so located as to cause no interference with the proper use of streets, and other public ways and places, and to cause no interference with the rights and reasonable convenience of property owners who join any of the streets or other public ways and places. The CATV system shall be constructed and operated in compliance with all city, state and national construction and electrical codes and shall be kept current with new codes. The company shall install and maintain its wires, cables, fixtures and other equipment in the manner that they will not interfere with any installations of the city or of a public utility serving the city.

(B) In case of disturbance of any street, public way or paved area, the company shall, at its own cost and expense and in a manner approved by the city, replace and restore the street, public way or paved area in as good a condition as before the work involving the disturbance was done. The company shall disturb the area only after reasonable notice to the city and under the supervision of representatives of the city.

(C) If at any time during the period of franchise the city shall lawfully elect to alter or change the grade of any street, sidewalk, alley or other public way, the company, upon reasonable notice by the city, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

(D) Any poles or other fixtures placed in any public way by the company shall be placed in the manner as not to interfere with the usual travel on the public way.

(E) The company shall, on the request of any person holding a building moving permit issued by the city, temporarily raise or lower its wires to permit the moving of building. The expense of the temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the company shall have the authority to require the payment, in advance. The company shall be given not less than a 48-hour advance notice to arrange for the temporary wire changes.

(F) The company shall have the authority to trim trees upon and overhanging streets and public ways and places of the franchise area so as to prevent the branches of the trees from coming in contact with the wires and cables of the company, except that at the option of the city, the trimming may be done by it or under its supervision and direction at the expense of the company.

(G) The company shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of the company when required by the city by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks or any other type of structures or improvements by public agencies; provided, however, that the company shall in all cases have the rights and obligations of abandonment of property of the company, subject to city ordinances.

(H) In the event that any other construction shall be contemplated on any public way, the company, upon reasonable notice by the city, shall locate its cable and underground conduits. The company shall also provide the city with copies of any maps showing the locations of its facilities located within the public ways and places.

(I) The city shall have the right to make additional use, for any public or municipal purpose, of any poles or conduit controlled or maintained exclusively by or for company in any street, provided the use by the city does not interfere with the use by company. The city shall indemnify and hold harmless the company against and from any and all claims, demands, causes of action, suits, actions, proceedings, damages, costs or liabilities of every kind and nature whatsoever arising out of the use of company's poles or conduits.

(J) The company shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damages injuries, or nuisances to the public.

(K) All structures and all lines equipment and connection in, over, under and upon the streets, sidewalks, alleys and public ways or places of the franchise area wherever situated or located shall at all times be kept and maintained in a safe, suitable condition and in good order and repair.
(Ord. 1605, passed 1-7-85)

§ 112.25 SYSTEM CONSTRUCTION AND EXTENSION.

(A) It is acknowledged that the company has constructed energized trunk cable throughout a substantial portion of the serviceable franchise area. The company is hereby authorized to extend the system within the franchise.

(B) (1) The company, whenever it shall receive requests for service from at least 15 subscribers within 1320 cable feet of its serial trunk cable or from at least 25 subscribers within 1320 cable feet of its underground trunk cable, shall extend its system to the subscribers at no cost to the subscribers for systems extension other than the usual connection and service fees for all subscribers, provided that the extension is technically feasible.

(2) The 1320 feet shall be measured in extension length of company's cable required for service located within the public way or easement and shall not include length of necessary service drop to the subscriber's home or premises.

(C) No person, firm or corporation in the company's service area shall be arbitrarily refused service. However, in recognition of the capital costs involved, for unusual circumstances, such as requirement for underground cable, or more than 150 feet of distance from distribution cable to connection of service to subscribers, or a subscriber density less than the density specified herein, in order to prevent inequitable burdens on potential cable subscribers in more densely populated areas, service may be made available on the basis of cost of materials, labor and easements.

(D) In the event additional adjacent territory is incorporated within the city's limits, by annexation or otherwise, the company's rights and duties under this subchapter shall be deemed to include additional territory.

(E) The company agrees to properly install cable to each subscriber's property and shall do so by proper aerial suspension or burial and shall not allow the cable to lay upon the ground beyond a reasonable time for construction of the proper serial or underground facilities.

(Ord. 1605, passed 1-7-85)

§ 112.26 OPERATION STANDARDS.

The company shall operate and maintain its cable television system in full compliance with the standards set forth by the Federal Communications Commission.

(Ord. 1605, passed 1-7-85)

§ 112.27 TELEPHONE LINES.

The grantee will maintain a local, toll-free or collect call telephone access line, which will be available to its subscribers 24 hours per day, seven days per week. Trained company representatives will be available to respond to customer telephone inquiries during normal business hours. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine.

(Ord. 1605, passed 1-7-85; Am. Ord. 2020, passed 3-7-05)

§ 112.28 RATE SCHEDULE.

The rates or charges which the grantee assesses its subscribers for cable television service shall be at all times fair and reasonable, as determined by the grantee and in compliance with applicable laws and regulations. Subscribers will be notified of any changes in rates, programming services or channel positions in writing. Notice must be given to subscribers no less than 30 days in advance of such changes if the change is within the control of the grantee. The grantee shall not be required to provide prior notice of any rate change that is a result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any federal agency, state, or franchising authority on the transaction between the grantee and the subscriber.

(Ord. 1605, passed 1-7-85; Am. Ord. 2020, passed 3-7-05)

§ 112.29 PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED.

The company shall not as to rates, charges, service facilities, rules, regulations or in any other respect make or grant any preference or advantage to any person nor subject any person to any prejudice or disadvantage, provided that nothing in this franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within the classification would be entitled, and provided further that service charges and connection may be waived or modified during, promotional campaigns of company.

(Ord. 1605, passed 1-7-85)

§ 112.30 SERVICES PROVIDED.

(A) The company agrees to carry no less than 18 channels on the basic service.

(B) In the event that the company shall desire to discontinue providing any of the specific services set forth in division (A), it shall first notify the city. The company shall not be required to continue to provide services which shall not be available to the company by satellite or which otherwise becomes unavailable, but in the event shall provide another selection of a similar nature.

(C) Any program additions will be preceded with 30 days written notice by the company to the city.
(Ord. 1605, passed 1-7-85; Am. Ord. 1611, passed 2-4-85; Am. Ord. 2020, passed 3-7-05)

§ 112.31 FRANCHISE PAYMENTS TO THE CITY.

The company shall pay to the city, on or before January 15 and on or before July 15 of each year, a 5% franchise fee based on gross basic subscriber revenues, including all taxes received for cable television operations in the city. No other fee, charge or consideration shall be imposed. Sales tax or other taxes levied directly on a per subscription basis and collected by the company for gross annual basic subscriber fees shall be deducted from the gross annual basic subscriber revenues before computation of sum due the city is made.

(Ord. 1605, passed 1-7-85)

§ 112.32 INDEMNIFICATION OF CITY.

(A) The company shall at all times protect and hold harmless the city from all claim, action, suits, liability, loss, expense or damages of every kind and description, including investigation costs, court costs and attorney fees, which may accrue to or be suffered or claimed by any person or persons arising out of the negligence of the company in the ownership, construction, repair, replacement, maintenance and operation of the cable television system and by reason of any license, copyright, property right or

patent of any article or system used in the construction or use of the system. The city shall give the company prompt notice of any claims, actions and suits, without limitation, in writing.

(B) The company shall maintain in full force and effect during the life of any franchise, public liability insurance in a solvent insurance company authorized to do business in the state, at no less than in the following amounts:

(1) \$50,000 property damage in any one accident;

(2) \$100,000 for personal injury to any one person;

(3) \$300,000 for personal injury in any one accident; provided that all insurance may contain reasonable deductible provisions not to exceed \$1,000 for any type of coverage, and provided further, the city may require that any and all investigation of claims made by any person, firm or corporation against the city arising out of any use or misuse of privileges granted to the company hereunder shall be made by or at the expense of the company or its insurer.

(Ord. 1605, passed 1-7-85)

§ 112.33 INQUIRES, PROCEEDINGS AND INVESTIGATIONS.

(A) Any inquiry, proceeding, investigation or other action to be taken or proposed to be taken by the city in regard to the operations of company's cable television system, including action in regard to a change in subscription rates, shall be taken only after 30 days public notice of the action or proposed action is published in a local daily or weekly newspaper having general circulation in the city. A copy of the action or proposed action shall be served directly on company. The company shall be given opportunity to respond in writing and/or at hearing as may be specified by the city, and members of the general public have been given an opportunity to respond or comment in writing on the action or proposed action.

(B) The public notice required by this section shall state clearly the action or proposed action to be taken, the time provided for response and the person or persons in authority to whom responses should be addressed, and the other procedures as may be specified by the city. If a hearing is to be held, the public notice shall give the date and time of the hearing, whether public participation will be allowed and the procedures by which the participation may be obtained. The company shall be a necessary party to any hearing conducted in regard to its operations.

(Ord. 1605, passed 1-7-85)

§ 112.34 TERMINATION OF FRANCHISE.

(A) Upon expiration of the franchise, if the company shall not have acquired an extension or renewal thereof and accepted the same, or upon termination as otherwise provided herein, it may have and it is hereby granted, the right to enter upon the streets and public ways of the city, for the purposes of removing therefrom any or all of its property and otherwise. In so removing the property the

company shall refill, at its own expense, any excavation that shall be made by it, and shall leave the streets and public ways and places in as good condition as that prevailing prior to the company's removal of its property.

(B) If the company shall fail to make payments as provided herein when due, or if the company fails to comply with other material terms and conditions hereof or any ordinance related hereto and shall not discontinue the act or correct the omissions which constitute non-compliance within 30 days after the city shall notify the company in writing of the failure. The city shall have the right to terminate the rights of the company under the franchise.

(Ord. 1605, passed 1-7-85)

§ 112.35 TRANSFER APPROVAL.

The company shall not sell or transfer its plant or system to another, nor transfer more than 50% of its capital stock, nor transfer any rights under this franchise to another without Council approval. No sale or transfer shall be effective until the vendee, assignment or lessee accepts the terms of the franchise and agrees to perform all the conditions thereof. Council approval will not be unreasonably withheld and neither this section nor other sections of this subchapter shall preclude the mortgaging, hypothecating or the assignment of certain rights in the system or the pledge of stock by the company for the purpose of financing.

(Ord. 1605, passed 1-7-85)

§ 112.36 TRANSMISSION DEVELOPMENTS.

It shall be the policy of the city liberally to amend the franchise upon application of the company, when necessary to, enable the company to take advantage of any developments in the field of transmission of television and radio signals which will afford it an opportunity more effectively, efficiently or economically to serve its customers.

(Ord. 1605, passed 1-7-85)

§ 112.37 MISCELLANEOUS PROVISIONS.

(A) When not otherwise prescribed herein, all matters herein required to be filed with the city shall be filed with the Clerk-Treasurer.

(B) The company shall assume the cost of publication of the franchise as the publication is required by law. A bill for publication costs shall be presented to the company by the Clerk-Treasurer upon the company's filing of acceptance and shall be paid at that time.

(C) The company shall provide without charge one outlet to each city governmental building, fire station, police station, public building including public schools and libraries that is passed by its cable.

The distribution of the cable facility inside the buildings and the extent thereof shall be the option, duty and expense of the building owner.

(D) In the case of any emergency or disaster, the company shall, upon request of the city make available its facilities to the city for emergency use during the emergency or disaster period.
(Ord. 1605, passed 1-7-85)

§ 112.38 COMPLIANCE.

The company shall at all times during the life of the franchise be subject to all lawful exercise of the police power by the city. The city reserves the right to adopt from time to time in addition to the provisions herein contained ordinances as may be deemed necessary to the exercise of police power. Regulation shall be reasonable and not destructive to the rights herein granted and not in conflict with the laws of the state or other laws or regulations.
(Ord. 1605, passed 1-7-85)

§ 112.39 FEDERAL REGULATION.

(A) Any modification resulting from amendment of Section 76.31, Franchise Standards, of the rules and regulations of the Federal Communications Commission shall be incorporated into the franchise as of the date the modification become obligatory under FCC regulation or in the event no obligatory date is established, within one year of adoption or at the time of franchise renewal, whichever occurs first.

(B) Any changes in the FCC or U.S. Supreme Court concerning local regulation of non-basic channels or changes in the basic service would be cause for renegotiation limited to only channel changes or basic service of the franchise.
(Ord. 1605, passed 1-7-85)

§ 112.40 VIOLATIONS.

(A) From and after the effective date of this subchapter, it shall be unlawful for any person to construct, install or maintain within any public street in the city, or within any other public property of the city, or within any privately owned area within the city which has not yet become a public street but on any tentative subdivision map approved by the city, any equipment or facilities for distributing any television signals or radio signals through a CATV system, unless a franchise authorizing the use of the street or property or area has first been obtained, and unless the franchise is in full force and effect.

(B) It shall be unlawful for any person, firm or corporation to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of the franchised CATV system within this city for the purpose of enabling himself or others to receive any television signal, radio signal, picture, program or sound, without payment to the operator of the system.

(C) It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, programs or sound.

(Ord. 1605, passed 1-7-85) Penalty, see § 10.99

CHAPTER 113: RESIDENTIAL SALES

Section

- 113.01 Definitions
- 113.02 Conditions

§ 113.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

RESIDENTIAL SALE. Includes sales of goods in a district zoned for residential purposes, from a private residence, under whatever name including but not limited to garage sale, patio sale, rummage sale, porch sale, yard sale and which sale is advertised and open to the general public.

MERCHANDISE. Items normally found in a household.
(Ord. 1511, passed - -81; Am. Ord. 1511, passed 7-10-95)

§ 113.02 CONDITIONS.

Residential sales shall be permitted in residential districts of the city provided the following conditions are met:

- (A) No merchandise other than normally found in a household may be sold.
- (B) The sale shall not exceed three days or parts thereof.
- (C) Not more than two sales per year shall be allowed at any one location.
- (D) The sale is restricted to the owner or occupant of the premises on which the sale is being conducted.
- (E) All signs are removed within 24 hours after the sale period has ended.
(Ord. 1511, passed - -81; Am. Ord. 1511, passed 7-10-95) Penalty, see § 10.99

CHAPTER 114: PEDDLERS, ITINERANT MERCHANTS, AND SOLICITORS

Section

- 114.01 Definitions
- 114.02 License requirement
- 114.03 Application procedure
- 114.04 Standards for issuance
- 114.05 Revocation procedure
- 114.06 Standards for revocation
- 114.07 Appeal procedure
- 114.08 Exhibition of identification
- 114.09 City policy on soliciting
- 114.10 Notice regulating soliciting
- 114.11 Duty of solicitors to ascertain notice
- 114.12 Prohibited solicitation

§ 114.01 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUSINESS. The business carried on by any person who is an itinerant merchant, peddler, or solicitor as defined in this section.

GOODS. Merchandise of any description whatsoever, and includes, but is not restricted to, wares and foodstuffs.

ITINERANT MERCHANT. Any person, whether as owner, agent, or consignee, who engages in a temporary business of selling goods within the city and who, in the furtherance of such business, uses any building, structure, vehicle, or any place within the city.

PEDDLER. Any person, not an itinerant merchant, who:

(1) Travels from place to place by any means carrying goods for sale, or making sales, or making deliveries; or

(2) Without traveling from place to place, sells or offers goods for sale from any public place within the city.

SOLICITOR. Any person who travels by any means from place to place, taking or attempting to take orders for sale of goods to be delivered in the future or for services to be performed in the future. A person who is a solicitor is not a peddler.

§ 114.02 LICENSE REQUIREMENT.

(A) Any person who is an itinerant merchant, peddler, or solicitor shall obtain a license before engaging in such activity within the city.

(B) The license fee for a peddler, solicitor, or itinerant merchant shall be \$30 per person, for the period of the license.

(C) No license issued under this chapter shall be transferable.

(D) All licenses issued under this chapter shall expire 90 days after the date of issuance thereof.

(E) This chapter shall not apply to representatives of nonprofit organizations or corporations including, but not limited to, Elwood schools, Elwood churches, Elwood clubs and associations. (Am. Ord. 2133, passed 3-5-12) Penalty, see § 10.99

§ 114.03 APPLICATION PROCEDURE.

(A) All applicants for licenses required by this chapter shall file an application with the Clerk. This application shall be signed by the applicant if an individual, or by all partners if a partnership, or by the president if a corporation. The applicant may be requested to provide information concerning the following items:

(1) The name and address of the applicant;

(2) (a) The name of the individual having management authority or supervision of the applicant's business during the time that it is proposed to be carried on in the city;

(b) The local address of such individual;

(c) The permanent address of such individual;

(d) The capacity in which such individual will act;

(3) The name and address of the person, if any, for whose purpose the business will be carried on, and, if a corporation, the state of incorporation;

(4) The time period or periods during which it is proposed to carry on applicant's business;

(5) (a) The nature, character, and quality of the goods or services to be offered for sale or delivered;

(b) If goods, their invoice value and whether they are to be sold by sample as well as from stock;

(c) If goods, where and by whom such goods are manufactured or grown, and where such goods are at the time of application;

(6) The nature of the advertising proposed to be done for the business;

(7) Whether or not the applicant, or the individual identified in division (A)(2)(a) above, or the person identified in division (A)(3) has been convicted of any crime or misdemeanor and, if so, the nature of each offense and the penalty assessed for each offense.

(B) Applicants for peddler or solicitor licenses may be required to provide further information concerning the following items, in addition to that requested under division (A) above:

(1) A description of the applicant;

(2) A description of any vehicle proposed to be used in the business, including its registration number, if any.

(C) All applicants for licenses required by this chapter shall attach to their application, if required by the city, credentials from the person, if any, for which the applicant proposes to do business, authorizing the applicant to act as such representative.

(D) Applicants who propose to handle foodstuffs shall also attach to their application, in addition to any attachments required under division (C), a statement from a licensed physician, dated not more than ten days prior to the date of application, certifying the applicant to be free of contagious or communicable disease.

Penalty, see § 10.99

§ 114.04 STANDARDS FOR ISSUANCE.

(A) Upon receipt of an application, an investigation of the applicant's business reputation and character of the applicant or its agents shall be made.

(B) The application shall be approved unless such investigation discloses tangible evidence that the conduct of the applicant's business or the prior conduct of the applicant would pose a potential threat to the public health, safety, or general welfare. In particular, tangible evidence that the applicant:

- (1) Has been convicted of a crime; or
- (2) Has made willful misstatements in the application; or
- (3) Has committed prior violations of ordinances pertaining to itinerant merchants, peddlers, solicitors, and the like; or
- (4) Has committed prior fraudulent acts; or
- (5) Has a record of continual breaches of solicited contracts.

will constitute valid reasons for disapproval of an application.
(Am. Ord. 2133, passed 3-5-12)

§ 114.05 REVOCATION PROCEDURE.

Any license or permit granted under this chapter may be revoked by the Clerk after notice and hearing, pursuant to the standards in § 114.06. Notice of hearing for revocation shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed to the licensee at his last known address, at least ten days prior to the date set for the hearing.

§ 114.06 STANDARDS FOR REVOCATION.

A license granted under this chapter may be revoked for any of the following reasons:

- (A) Any fraud or misrepresentation contained in the license application; or
- (B) Any fraud, misrepresentation, or false statement made in connection with the business being conducted under the license; or
- (C) Any violation of this chapter; or
- (D) Licensee's conviction of a misdemeanor or felony; or
- (E) Conducting the business licensed in an unlawful manner or in such a way as to constitute a menace to the health, safety, or general welfare of the public.
(Am. Ord. 2133, passed 3-5-12)

§ 114.07 APPEAL PROCEDURE.

(A) Any person aggrieved by a decision under §§ 114.04 or 114.06 shall have the right to appeal to the City Council. The appeal shall be taken by filing with the City Council, within 14 days after notice of the decision has been mailed to such person's last known address, a written statement setting forth the grounds for appeal. The City Council shall set the time and place for a hearing, and notice for such hearing shall be given to such person in the same manner as provided in § 114.05.

(B) The order of the City Council after the hearing shall be final.

§ 114.08 EXHIBITION OF IDENTIFICATION.

(A) Any license issued to an itinerant merchant under this chapter shall be posted conspicuously in or at the place named therein. In the event more than one place within the city shall be used to conduct the business licensed, separate licenses shall be issued for each place.

(B) The Clerk shall issue a license to each peddler or solicitor licensed under this chapter. The license shall contain the words "Licensed Peddler" or "Licensed Solicitor," the expiration date of the license, and the number of the license. The license shall be kept with the licensee during such time as he is engaged in the business licensed.

Penalty, see § 10.99

§ 114.09 CITY POLICY ON SOLICITING.

It is hereby declared to be the policy of the city that the occupants of the residences in the city shall make the determination of whether solicitors shall be, or shall not be, invited to their respective residences.

§ 114.10 NOTICE REGULATING SOLICITING.

(A) Notice of the refusal of invitation to solicitors, to any residence, shall be given on a weatherproof card, at least three inches by four inches in size, exhibited upon or near the main entrance door to the residence, indicating the determination by the occupant, containing the applicable words, as follows:

"NO SOLICITORS INVITED"

or words of similar import.

(B) The letters shall be at least 1/3-inch in height. For the purpose of uniformity, the cards shall be provided by the Chief of Police to persons requesting, at the cost thereof.

(C) The card so exhibited shall constitute sufficient notice to any solicitor of the determination by the occupant of the residence of the information contained thereon.
(Am. Ord. 2133, passed 3-5-12)

§ 114.11 DUTY OF SOLICITORS TO ASCERTAIN NOTICE.

(A) It shall be the duty of every solicitor upon going onto any premises in the city upon which a residence is located to first examine the notice provided for in § 114.10 if any is attached, and be governed by the statement contained on the notice. If the notice states “NO SOLICITORS INVITED,” then the solicitor, whether registered or not, shall immediately and peacefully depart from the premises.

(B) Any solicitor who has gained entrance to any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant.
Penalty, see § 10.99

§ 114.12 PROHIBITED SOLICITATION.

It is hereby declared to be unlawful and shall constitute a nuisance for any person to go upon any premises and ring the doorbell upon or near any door, or create any sound in any manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof and engage in soliciting in defiance of the notice exhibited at the residence in accordance with the provisions of § 114.10 above.
Penalty, see § 10.99

TITLE XIII: GENERAL OFFENSES

Chapter

130. GENERAL OFFENSES

CHAPTER 130: GENERAL OFFENSES

Section

- 130.01 Curfew
- 130.02 Firearms and other weapons
- 130.03 False alarms
- 130.04 Loitering
- 130.05 Sleeping in public places

§ 130.01 CURFEW.

(A) *Purpose.* The purpose of this section is to promote the general welfare and protect the general public through the reduction of juvenile violence within the city, to protect both real and personal property within the city from continuing juvenile mischief activity, to promote the safety and well-being of the city's youngest citizens, persons under the age of 18, whose inexperience renders them particularly vulnerable to becoming participants in unlawful activities, particularly unlawful drug activities and to being victimized by older perpetrators of crime, and to promote, foster, and strengthen parental responsibility for children.

B) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CURFEWS HOURS. The hours between 1:00 a.m. and 5:00 a.m. on Saturday or Sunday, after 11:00 p.m. on Sunday, Monday, Tuesday, Wednesday, or Thursday, or before 5:00 a.m. on Monday, Tuesday, Wednesday, Thursday, or Friday.

EMERGENCY. Unforeseen circumstances, or the status or condition resulting therefrom requiring immediate action to safeguard life, limb, or property. The term includes but is not limited to fires, natural disasters, automobile accidents, or other similar circumstances.

ESTABLISHMENT. Any privately-owned place of business within the city and any place of amusement or entertainment. With respect to such establishments, the term **OPERATOR** shall mean any person and any firm, association, partnership (and the individual members or partners thereof) and/or any corporation (and the individual officers thereof) conducting or managing that establishment.

MINOR. Any person under 18 years of age who has not been emancipated by court order pursuant to the law of the state.

OFFICER. A police or other law enforcement officer charged with the duty of enforcing the laws of the state and/or the ordinances of the city.

PERSON. An individual, not an association, corporation, or any other legal entity.

PUBLIC PLACE. Any place to which the public or a substantial group of the public has access, including but not limited to streets, highways, roads, sidewalks, alleys, avenues, parks, and/or the common areas of schools, hospitals, apartment houses, office buildings, and shops.
(‘66 Code, § 4-11-1-1)

(C) *Offenses.*

(1) It shall be unlawful for a minor, during curfew hours, to remain in or upon any public place within the city, to remain in any motor vehicle operating or parked therein or thereon, or to remain in or upon the premises of any establishment within the city, unless:

(a) The minor is accompanied by a parent or guardian; or

(b) The minor is involved in an emergency; or

(c) The minor is engaged in an employment activity, or going to or returning home from such activity, without any detour or stop; or

(d) The minor is on the sidewalk directly abutting a place where he or she resides with a parent or guardian; or

(e) The minor is attending an activity supervised sponsored by a school, religious, or civic organization, by a public organization or agency, or by another similar organization or entity, which activity is supervised by adults, and/or the minor is going to or returning home from such activity without detour or stop; or

(f) The minor is on an errand at the direction of a parent or guardian and the minor has on his or her possession a writing signed by the parent or guardian containing the following information: the name, signature, address, and telephone number of the parent or guardian authorizing the errand, the name of the minor, the minor’s destination, and the date and time that the minor is authorized to be engaged in the errand; or

(g) The minor is involved in interstate travel through, or beginning or terminating in the city; or

(h) The minor is exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly.

(2) It shall be unlawful for a minor’s parent or guardian to knowingly permit, allow, or encourage such a minor to violate this section.

(3) It shall be unlawful for a person who is the owner or operator of a motor vehicle to knowingly permit, allow, or encourage a minor to violate this section.

(4) It shall be unlawful for the operator of an establishment, or any person who is an employee thereof, to knowingly permit, allow, or encourage a minor to remain upon the premises of the establishment during curfew hours. It shall be a defense to prosecution of this section that the operator or employee of an establishment promptly notified the police department that a minor was present at the establishment after curfew hours and refused to leave.

(5) It shall be unlawful for any person (including a minor) to give false name, address, or telephone number to any officer investigating a possible violation of this section.
(‘66 Code, § 4-11-1-2)

(D) *Enforcement.*

(1) Before taking any enforcement action hereunder, an officer shall make an immediate investigation for the purpose of ascertaining whether or not the presence of a minor in a public place, motor vehicle, and/or establishment within the city during curfew hours in violation of this ordinance.

(2) If such investigation reveals that the presence of such minor is in violation, then the officer shall issue a written citation to the minor or offender, charging him or her with violation of this ordinance. The officer shall provide a copy of the same to the City Attorney, and the City Attorney may consider further civil prosecution.

(3) Further, as soon as practicable, the officer shall advise the minor’s parent or guardian of the alleged violation. If a parent or guardian is not immediately available, the officer shall issue a written advisement to be mailed by the police department.
(‘66 Code, § 4-11-1-3) (Ord. 1961, passed 11-13-2000) Penalty, see § 10.99

Cross-reference:

Unlawful acts, see § 111.06

§ 130.02 FIREARMS AND OTHER WEAPONS.

(A) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

WEAPON. Any implement or tool whose primary function is to cause bodily harm to persons against whom it is used which shall include, not are not limited to the following:

(a) Firearms (including black powered weapons, CO2 powered guns, air powered guns and ammunition for any such device);

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- (b) Chemical agents (CapStun, Oleoresin Capsicum, Mace);
- (c) Edged weapons, including but not limited to, swords and knives with a blade length over four inches;
- (d) Striking instruments (e.g. batons, clubs);
- (e) Missile, throwing objects (e.g. sling shots, bow/arrows);
- (f) Explosives;
- (g) Incendiary devices; and
- (h) Any object deemed to be inherently dangerous to City of Elwood employees and/or customers, guests, contractors and vendors.

(B) Except as provided in division (C) of this section, no person shall possess on or about his or her person, or otherwise bring into the Elwood Municipal Building, any weapon as set forth hereinabove, and no person shall intentionally display a weapon at any public meeting of the city or any of its divisions, departments, boards, or commissions, wherever said public meeting is held.

(C) Division (B) of this section shall not apply to the following:

- (1) Law enforcement officers and Federal enforcement officers, pursuant to I.C. 35-41-1-17;
- (2) Indiana Department of Correction officers;
- (3) Judicial and quasi judicial officers;
- (4) Retired police officers authorized to carry weapons;
- (5) Employees of the United States duly authorized to carry weapons;
- (6) Any municipal employee or contract employee licensed to carry a firearm in the State of Indiana, so long as the following requirements are met:
 - (a) The weapon is locked in the trunk of the employee's vehicle;
 - (b) The weapon is kept in the glove compartment of the employee's locked vehicle; or
 - (c) Stored out of plain sight in the employee's locked vehicle; and

(7) City employees carrying chemical agents within the City of El wood Municipal Building, other than in the City Council Meeting Room/City Courtroom.

(D) In addition to the penalties otherwise proscribed for violation of this section, if the person who violates this section is an employee of the city, the employee shall be subject to disciplinary action. Additionally, any employee of the city who is aware of any violation of this section, and fails to report the violation to his or her supervisor, will also be subject to disciplinary action.

(E) It is not a defense to this section that the individual so charged has a license to carry a firearm in the State of Indiana, and any other state's license that is honored by the State of Indiana.

(F) The penalty for violation of this section shall be as set forth in § 10.99 of the Elwood Code of Ordinances.

(Ord. 2169, passed 7-1-13; Am. Ord. 2176, passed 8-5-13) Penalty, see § 10.99

§ 130.03 FALSE ALARMS.

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ALARM SYSTEM. Any device used for the detection of an unauthorized entry or attempted entry into a building, structure or facility and alarms for fire, smoke, excess heat or explosion or for alerting others of the commission of an unlawful act within a building, structure, facility or grounds, which when activated causes notification to be made directly or indirectly to the Elwood Police Department. For the purpose of this section, an **ALARM SYSTEM** shall not include:

(1) An alarm installed on a motor vehicle;

(2) An alarm designed and operated so that no notification is given to the Police Department until after the occupants, and agent of the owner or lessee, or an agent of the alarm system business have checked the alarm site and determined that the alarm was the possible or probable result of criminal activity or fire or explosion of the kind for which the **ALARM SYSTEM** was designed to give notice. The alarm shall be equipped to disconnect any exterior sounding alarm automatically within ten minutes of activation; and

(3) An alarm installed upon premises occupied by the United States, the state or any political subdivision thereof.

FALSE ALARM. An alarm eliciting a police or fire response when the situation does not warrant it. For the purposes of this section, this does not include alarms triggered by severe atmospheric conditions or other circumstances not reasonably under the control of the alarm user, installer or maintainer.

(B) *Prohibited acts.*

(1) It shall be a prohibited act punishable by fine as provided in § 10.99 (B) to do any of the following acts:

(a) For a person who owns or controls property on which an alarm system is installed to issue, cause to be issued or permit the issuance of a false alarm.

(b) For a person who owns or controls property to install, maintain or permit to operate any alarm which automatically dials into any police department or emergency telephone line when the alarm is activated.

(2) Each separate occurrence under division (1) above and each separate day, under division (1)(b) shall constitute a separate and distinct violation.

(C) *Notice of violation.*

(1) The Police Chief, Fire Chief or designee may issue a violation. Upon the issuance of the first three violations of division (B) of this section for any specific property per calendar year, any fine will be excused upon the violator submitting a written report to the Police Chief or Fire Chief on the cause of the alarm within two weeks of the service of the notice of violation. The report must show that steps have been taken to correct the problem and that the problem will not occur again in the future.

(2) The notice of violation shall state the name of the violator, the location of the violation, the date and time of the violation, the division of this section which was violated, the penalties for the violation and the violator's right to appeal under any division of the section, if applicable.

(3) A notice of violation shall be served upon the violator at the violator's last known address. Service shall be complete upon the mailing (regardless of the receipt of the notice) or posting of the notice upon the property where the alarm is located.

(D) *Hearing on excuse.* Any person noticed for a violation of division (B) may petition the Board of Public Works and Safety for a hearing to show that for some reason beyond the violator's control, the false alarm was activated. The petition for a hearing must state specifically the reasons beyond the violator's control for the activation of the alarm. The violator must also furnish the Board of Public Works and Safety names and addresses of any and all witnesses as to the foregoing reasons. The petition must be filed with the office of the Police Chief within two weeks of service of the notice of violation. After the hearing, the Board of Public Works and Safety, in its sole discretion, will determine whether the false alarm was activated for reasons beyond the control of the violator. If the Board of Public Works and Safety does determine that it was beyond the control of the violator, the violation will be excused and no fine will be imposed.

(Ord. 1887, passed 11-6-96) Penalty, see § 10.99

§ 130.04 LOITERING.

(A) A person commits a violation if he or she loiters or prowls in a place, at a time, or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether alarm is warranted is the fact that the person takes flight upon appearance of a police officer, refuses to identify himself or herself, or manifestly endeavors to conceal himself or herself or any object. Unless flight by the person or other circumstances makes it impractical, a police officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm which would otherwise be warranted, by requesting the person to identify himself or herself and to explain his or her presence or conduct. No person shall be convicted of an offense under this section if the police officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by the person was true and, if it had been believed by the police officer at the time, would have dispelled the alarm. Any police officer may arrest any person suspected of being a loiterer or prowler without a warrant if it reasonably appears that the delay in arresting the suspect caused by obtaining a warrant would result in the suspect's escape.

(B) It shall be unlawful for any person, after first being warned by a police officer, or where a "no loitering" sign or signs have been posted, to loiter, stand, sit, or lie in or upon any public or quasi-public sidewalk, street, curb, cross-walk, walkway area, mall or that portion of private property utilized for public use, so as to hinder or obstruct unreasonably the free passage of pedestrians or vehicles thereon. It shall be unlawful for any person to block, obstruct, or prevent free access to the entrance to any building open to the public.

(C) For the purpose of this section, **PUBLIC PLACE** has the following definition unless the context clearly indicates or requires a different meaning: an area generally visible to public view, including streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, automobiles (whether moving or not), and buildings open to the general public, including those which serve food or drink or provide entertainment, and the doorways and entrances to buildings or dwellings and the grounds enclosing them. ('66 Code, §§ 4-11-2-1 and ('66 Code, § 4-11-2-2) Penalty, see § 10.99

§ 130.05 SLEEPING IN PUBLIC PLACES.

(A) *Streets, sidewalks and public ways.* No person shall sleep or lie upon any part of a public street or right-of-way, whether used for traffic or not used for traffic. No person shall sleep on any alley or any public way. No person shall sleep on any sidewalk.

(B) *City buildings.* No person shall sleep in any building owned or operated by the city, except in those buildings and locations designated for sleeping, such as fire station dormitories and shelters provided for indigent persons.

(C) *Places open to the public.* No person shall sleep in any other building or part of a building open to the public without the permission of the owner or person in charge of the premises.

(D) *Warning before filing charges.* No person shall be arrested for a violation of this section or charged with a violation of this section, unless the person continues to sleep, attempt to sleep or lie in a location covered by this section after a police officer has informed him or her that continued conduct is in violation hereof.

(E) *Exception in the case of illness.* No person shall be charged with a violation of this section if the person is unable, due to illness, to comply.

(Ord. 1633, passed 12-26-85) Penalty, see § 10.99

TITLE XV: LAND USAGE

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CHAPTER 150: BUILDING REGULATIONS

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GENERAL PROVISIONS

§ 150.01 [RESERVED].

§ 150.02 DEFINITION.

This chapter particularly incorporates by reference the definition of “substantial property interest” as defined in I.C. Section 36-7-9-2.

(‘66 Code, § 3-3-3-2) (Ord. 1572, passed - -)

§ 150.03 BOARD OF WORKS AND PUBLIC SAFETY; DUTIES.

The Board of Works and Public Safety shall be the executive department of the city responsible for the administration of this chapter.

(‘66 Code, § 3-3-3-3) (Ord. 1572, passed - -)

§ 150.04 BUILDING PERMIT; INSPECTIONS AND ENFORCEMENT.

(A) The Planning Commission, by and through its Planning Director, should issue building permits and make inspections of buildings under authority of and in cooperation with the Administrative Building Council of Indiana. The Planning Commission, by and through its Planning Director, is authorized and directed to administer the Commission in accordance with the rules and regulations issued by the Administrative Building Council of Indiana as authorized by I.C. 22-12-1-1 *et seq.*, as amended.

(‘66 Code, § 3-3-2-1)

(B) Whenever a violation of the rules and regulations issued by the Administrative Building Council of Indiana occurs, either the Planning Director, the Mayor or the City Engineer may file a complaint for the enforcement of the rules and regulations with the City Court. ('66 Code, § 3-3-2-2) (Ord. 1329, passed - -)

Cross-reference:

Director; duties, see § 150.51

§ 150.05 STREET NUMBERS.

(A) All structures serving as a residence or business shall apply and attach their respective address numbers on their structures in such a way that the numbers shall be clearly visible at all times from the street passing in front of said structure.

(1) Numbers shall be a minimum height of three inches or larger. Block type letters and numbers shall be used.

(2) "Mobile home community" is defined as a mobile home community where the owners of each mobile home actually own their own lot. Mobile home community residents shall post their mailing address numbers in the front of the home closest to the driveway or right-of-way by which the public accesses the property. All other numbers shall be removed for public safety.

(3) "Mobile home park" is defined as a mobile home park where the park owner owns the individual lots and rents them to home owners. In a mobile home park, only the lot number shall be applied to the structure in accordance with this section. The park mailing address shall be posted at the entry of the park.

(B) The Fire Department and Police Department and/or Building Commissioner shall notify any homeowner or business owner if the numbers thereby placed on their residence or business are not clearly visible from the street way and that remedial action is necessary to comply with this section.

(C) (1) Failure of any resident, homeowner or business owner to comply with this section constitutes a violation thereof, and a penalty shall be imposed up to an amount not exceeding \$20.

(2) Each day that a resident, homeowner or business owner is not in compliance will constitute a separate violation of this section.

(Ord. 2032, passed 12-5-05)

BUILDING CODE**§ 150.15 TITLE.**

This subchapter, and all ordinances supplemental or amendatory hereto, shall be known as the “Building Code of the City of Elwood, Indiana,” may be cited as such and will be referred to herein as “this code.”

(Ord. 1778, passed 2-1-93)

§ 150.16 ADOPTION OF STATE RULES.

(A) Building rules of the Indiana Fire Prevention and Building Safety Commission as set out in the following Articles of Title 675 of the Indiana Administrative Code are hereby incorporated by reference in this code and shall include later amendments to those articles as the same are published in the Indiana Register or the Indiana Administrative Code effective dates as fixed therein:

(1) Article 13, Building Codes:

- (a) Fire and Building Safety Standards;
- (b) Indiana Building Code;
- (c) Indiana Building Code Standards; and
- (d) Indiana Handicapped Accessibility Code.

(2) Article 14, One- and Two-Family Dwelling Code and Indiana One- and Two-Family Dwelling Code;

(3) Article 16, Plumbing Code: Indiana Plumbing Code;

(4) Article 17, Electrical Codes;

- (a) Indiana Electrical Code; and
- (b) Safety Code for Health Care Facilities.

(5) Article 18, Mechanical Code: Indiana Mechanical Code;

(6) Article 19, Energy Conservation Codes:

- (a) Indiana Energy Conservation Code; and

(b) Modifications to the Model Energy Code.

(7) Article 20, Swimming Pool Code: Indiana Swimming Pool Code.

(B) Copies of adopted building rules, codes and standards are on file in the office of Building Commissioner.

(Ord. 1778, passed 2-1-93)

§ 150.17 PURPOSE.

The purpose of this code is to provide minimum standards for the protection of life, health, environment, public safety and general welfare and for the conservation of energy in the design and construction of buildings and structures.

(Ord. 1778, passed 2-1-93)

§ 150.18 AUTHORITY.

The Building Commissioner is hereby authorized and directed to administer and enforce all of the provisions of this code. Whenever in this subchapter, it is provided that anything must be done to the approval of or subject to the direction of the Building Commissioner or any other officer of the Building Department, this shall be construed to give the officer only the discretion of determining whether this code has been complied with. No provision shall be construed as giving any officer discretionary powers as to what this code shall be, or power to require conditions not prescribed by ordinances or to enforce this code in an arbitrary or discriminatory manner. Any variance from adopted building rules are subject to approval under I.C. 22-13-2-7(b).

(Ord. 1778, passed 2-1-93)

§ 150.19 SCOPE.

The provisions of this code apply to the construction, alteration, repair, use, demolition, occupancy and addition to all buildings and structures, other than industrialized building systems or mobile structures certified under I.C. 22-15-4.

(Ord. 1778, passed 2-1-93; Am. Ord. 1982, passed 5-6-02)

§ 150.20 PERMIT REQUIRED.

(A) Forms shall be furnished by the Building Commissioner, and all fees required by this Code shall be paid to the Clerk-Treasurer.

(B) A permit will be obtained for the following:

- (1) Any new construction structure;
- (2) Storage sheds 160 square feet or larger;
- (3) Demolition of any structure;
- (4) Porches;
- (5) Decks or patios 80 square feet or larger;
- (6) Sidewalks, driveways and curbs;
- (7) Fences (lot line inspection);
- (8) Roofing (more than shingle replacement);
- (9) Any remodel or renovation of any structure over \$500;
- (10) All carports; and
- (11) Water lines and sewer laterals.

(Ord. 2063, passed 2-4-08)

§ 150.21 APPLICATION PROCEDURE.

(A) No building permit shall be issued for the foregoing purposes, unless the application for a permit is accompanied by a plat or sketch of the purposed location showing lot boundaries and by plans and specifications showing the work to be done. In addition, a copy of a design release, issued by the State Building Commissioner and the State Fire Marshal pursuant to I.C. 22-15-3-1, shall be provided to the Building Commissioner before issuance of a permit for construction covered by the design release.

(B) Prior to the issuance of any building permit, the Building Commissioner shall:

(1) Review all building permit applications to determine full compliance with the provisions of this code.

(2) Review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding.

(3) Review building permit applications for major repairs within the flood plain area having special flood hazards to determine that the proposed repair:

(a) Uses construction materials and utility equipment that are resistant to flood damage;

and

(b) Uses construction methods and practices that will minimize flood damage.

(4) Review building permit applications for new construction or substantial improvements within the flood plain area having special flood hazards to assure that the proposed construction (including prefabricated and mobile homes)

(a) Is protected against flood damage;

(b) Is designed (or modified) and anchored to prevent flotation, collapse or lateral movement of the structure, flood damage; and

(c) Uses construction methods and practices that will minimize flood damage.

(Ord. 1778, passed 2-1-93)

§ 150.22 FEES.

Fee schedule in § 153.73.

(Ord. 2063, passed 2-4-08)

§ 150.23 INSPECTIONS.

(A) After the issuance of any building permit, the Building Commissioner shall make or shall cause to be made, inspections of the work being done as are necessary to insure full compliance with the provisions of this subchapter and the terms of the permit. Reinspection of work found to be incomplete or not ready for inspection are subject to assessment of reinspection fees as prescribed in this subchapter.

(B) The Chief of the Fire Department or his designated representative, shall assist the Building Commissioner in the inspection of fire suppression, detection and alarm systems and shall provide reports of the inspection to the Building Commissioner.

(C) Upon presentation of proper credentials, the Building Commissioner or his duly authorized representatives may enter at reasonable times any building, structure or premises in the city to perform any duty imposed upon him by this subchapter.

(Ord. 1778, passed 2-1-93)

§ 150.24 COMPLIANCE REQUIRED.

All work done under any permit shall be in full compliance with all other ordinances pertaining thereto, and in addition to the fees for permits, there shall be paid the fees prescribed in the ordinances. (Ord. 1778, passed 2-1-93) Penalty, see § 10.99

§ 150.25 STOP ORDERS.

Whenever any work is being done contrary to the provisions of this code, the Building Commissioner may order the work stopped by notice in writing served on any persons engaged in the

doing or causing the work to be done and any persons shall forthwith stop the work until authorized by the Building Commissioner to proceed with the work.

(Ord. 1778, passed 2-1-93) Penalty, see § 10.99

§ 150.26 CERTIFICATE OF OCCUPANCY.

No certificate of occupancy for any building or structure constructed after the adoption of this code shall be issued unless the building or structure was constructed in compliance with the provisions of this code. It shall be unlawful to occupy any building or structure unless a full, partial or temporary certificate of occupancy has been issued by the Building Commissioner.

(Ord. 1778, passed 2-1-93) Penalty, see § 10.99

§ 150.27 WORKMANSHIP.

All work on the construction, alteration and repair of buildings and other structures shall be performed in a good and workmanlike manner according to accepted standards and practices in the trade.

(Ord. 1778, passed 2-1-93)

§ 150.28 VIOLATIONS.

It shall be unlawful for any person, firm or corporation, whether as owner, lessee, sub-lessee or occupant, to erect, construct, enlarge, alter, repair, improve, remove, convert, demolish, equip, use, occupy or maintain any building or structure, other than fences, in the city or cause or permit the same to be done, contrary to or in violation of the provisions of this code.

(Ord. 1778, passed 2-1-93) Penalty, see § 10.99

§ 150.29 RIGHT OF APPEAL.

All persons shall have the right to appeal any order of the Building Commissioner first through the Board of Zoning Appeals and then to the Fire Prevention and Building Safety Commission of Indiana in accordance with the provisions of I.C. 22-13-2-7 and I.C. 4-21.5-3-7.

(Ord. 1778, passed 2-1-93)

§ 150.30 REMEDIES.

The Building Commissioner shall in the name of the city bring actions in the Circuit or Superior Courts of Madison County for mandatory and injunctive relief in the enforcement of and to secure compliance with any order or orders made by the Building Commissioner, and any action for mandatory or injunctive relief may be joined with an action to recover the penalties provided for in this subchapter.

(Ord. 1778, passed 2-1-93)

UNSAFE BUILDINGS**§ 150.45 AUTHORITY.**

Under the provisions of I.C. 36-7-9-3, there is hereby established the City Unsafe Building Law. All proceedings within the city for the inspection, repair and removal of unsafe buildings shall be governed by the law and the provisions of this subchapter.

('66 Code, § 3-3-1-1) (Ord. 1501, passed - -; Am. Ord. 1982, passed 5-6-02)

§ 150.46 BUILDING COMMISSIONER; POWERS.

The City Building Commissioner shall be authorized to administer and to proceed under the provisions of the law in ordering the repair or removal of any buildings found to be unsafe as specified therein or as specified hereafter.

('66 Code, § 3-3-1-3) (Ord. 1501, passed - -)

§ 150.47 PUBLIC NUISANCES.

All buildings or portions thereof within the city which are determined after inspection by the Building Commissioner to be unsafe as defined in this subchapter are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedures specified in §§ 150.55 et seq.

('66 Code, § 3-3-1-2) (Ord. 1501, passed - -; Am. Ord. 1982, passed 5-6-02) Penalty, see § 10.99

Cross-reference:

Abatement procedures, see § 94.04, §§ 150.55 et seq.

Nuisances prohibited, see § 94.03

§ 150.48 BUILDING STANDARDS ESTABLISHED.

Wherever in the building regulations of the city or the City Unsafe Building Law, it is provided that anything must be done to the approval of or subject to the direction of the Building Commissioner, or any other officer of the city, this shall be construed to give the officer only the discretion of determining whether the rules and standards established by this subchapter have been complied with; and no provisions shall be construed as giving any officer discretionary powers as to what regulations or standards shall be, power to require conditions not prescribed by this subchapter or to enforce the provisions of this subchapter in an arbitrary or discretionary manner.

('66 Code, § 3-3-1-4) (Ord. 1501, passed - -)

§ 150.49 UNSAFE BUILDING STANDARDS.

The definition of an unsafe building contained in I.C. 36-7-9-4(a) is hereby supplemented to provide minimum standards for building condition or maintenance in the city, by adding the following to the definition: Any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be an unsafe building, provided that the conditions or defects exist to the extent that life, health, property or safety of the public or its occupants are endangered.

(A) Whenever any door, aisle, passageway or other means of exit is not sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.

(B) Whenever the stress in any materials, member or portion thereof, due to all dead and live loads, is more than one and one-half times the working stress or stresses allowed for new buildings of similar structure, purpose or location.

(C) Whenever any portion thereof has been damaged by fire, earthquake, wind, flood or by any other cause, to an extent that the structural strength or stability thereof is materially less than it was before a catastrophe and is less than the minimum requirements for new buildings of similar structure, purpose or location.

(D) Whenever any portion, member or appurtenance thereof is likely to fail, to become detached or dislodged or to collapse and thereby injure persons or damage property.

(E) Whenever any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one-half of that specified for new buildings of similar structure, purpose or location without, exceeding the working stresses permitted for the buildings.

(F) Whenever any portion thereof has cracked, warped, buckled or settled to the extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.

(G) Whenever the building or structure, or any portion has:

- (1) Dilapidation, deterioration or decay (including exterior coatings);
- (2) Faulty construction (including non-weather deterrent material on exterior surfaces);
- (3) The removal, movement or instability of any portion of the ground necessary for the purpose of supporting the building; or
- (4) Any other cause, which is likely to partially or completely collapse.

(H) Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.

(I) Whenever the exterior walls or other vertical structural members list, lean or buckle to an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base.

(J) Whenever the building or structure has been so damaged by fire, wind, earthquake or flood or has become so dilapidated or deteriorated as to become:

- (1) An attractive nuisance to children; or
- (2) Freely accessible to persons for the purpose of committing unlawful acts.

(K) Whenever any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to a building or structure provided by the building regulations of the city, or of any law or ordinance of this state or county relating to the condition, location or structure of buildings.

(L) Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances has in any non-supporting part, member or portion less than 50% or in any supporting part, member or portion less than 66% of the:

- (1) Strength;
- (2) Fire-resisting qualities or characteristics; or
- (3) Weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location.

(M) Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangements, inadequate light, air or sanitation facilities, or otherwise, is determined by the Building Commissioner or Public Health Authorities to be unsanitary, unfit for human habitation or in such a condition that it is likely to cause sickness or disease.

(N) Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the Building Commissioner or City Fire Department to be a fire hazard.

(O) Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whether any building or structure is abandoned for a period

in excess of six months so as to constitute the building or portion thereof an attractive nuisance or hazard to the public.

('66 Code, § 3-3-1-5) (Ord. 1501, passed - -; Am. Ord. 1982, passed 5-6-02)

§ 150.50 WORK STANDARDS.

All work for the reconstruction, alteration, repair or demolition of buildings and other structures shall be performed in a good workmanlike manner according to the accepted standards and practices in the trade. The provisions of the rules and regulations pertaining to construction, plumbing, electrical, mechanical and one- and two-family dwellings, promulgated by the Indiana Department of Fire and Building Services Office of State Building Commissioners, shall be considered standard and acceptable practice for all matters covered by this subchapter or orders issued pursuant to this subchapter by the City Building Commissioner.

('66 Code, § 3-3-1-6) (Ord. 1501, passed - -; Am. Ord. 1982, passed 5-6-02) Penalty, see § 10.99

§ 150.51 [RESERVED].

§ 150.52 UNSAFE BUILDING FUND.

An Unsafe Building Fund is hereby established in the operating budget of the city in accordance with the provisions of I.C. 36-7-9-14 and I.C. 36-7-9-15.

('66 Code, § 3-3-1-8) (Ord. 1501, passed - -)

§ 150.53 COMPLIANCE REQUIRED.

No person, firm or corporation, whether as owner, lessee, sublessee or occupant, shall erect, construct, enlarge, alter, repair, move, improve, remove, demolish, equip, use, occupy or maintain any building or premises, or cause or permit the same to be done, contrary to or in violation of any of the provisions of this subchapter or any order issued by the Building Commissioner.

('66 Code, § 3-3-1-9) (Ord. 1501, passed - -) Penalty, see § 10.99

§ 150.54 SEALING UNSAFE BUILDINGS.

(A) All openings in unsafe buildings as determined by the Building Commissioner/Director of Planning or the Elwood Board of Zoning Appeals shall be sealed with not less than a 7/16-inch exterior grade chip board, a ½-inch exterior grade plywood of one-inch nominal lumber.

(B) The chip board or plywood shall be fastened with not less than six penny common nails every eight inches around the perimeter of the opening; the one-inch nominal lumber, six inches in width, three to eight penny nails per end and 12-inch width four to eight penny nails per end.

(C) If nails are not compatible to the area around the openings, a suitable fastener shall be used to insure against intrusion.

(D) All openings so sealed shall be kept sealed until either renovation is started or demolition takes place.

(Ord. 1768, passed 10-5-92; Am. Ord. 1982, passed 5-6-02) Penalty, see § 10.99

§ 150.55 ABATEMENT PROCEDURES.

(A) The Planning Director (also known as Building Inspector), Building Commissioner, and Board of Zoning Appeals may at any time require the owner of any property upon which an unsafe building is situated, as herein defined, to do all things necessary to remove the nuisance created thereby by giving the owner 30 days written notice as to the existence of the Unsafe Building Standard(s). The notice herein shall state the nature of the alleged Unsafe Building Standard(s) and the action deemed necessary to correct the condition and shall fix a date not sooner than ten days from the date of the receipt of the notice when the property owner may appear before the Board of Zoning Appeals to be heard on the question of the unsafe building standard(s). All notices as herein required shall be sent by certified mail, return receipt, or personal service, to the owner and or occupant at the address of the real estate, or to the last known address of the owner as reflected in the tax roles of the city, township, or county. If the notice is sent to the owner at the address shown in the tax roles, all of the times required under these abatement procedures shall be from the date of mailing and not the date of receipt of said notice.

(B) Upon the failure of the owner to cause the abatement of the nuisance created by the Unsafe Building Standard(s) violation, as required by this section, and after notice and opportunity for hearing before the Board of Zoning Appeals, the Board of Zoning Appeals may proceed at once to cause abatement of the nuisance and charge the costs thereof against such owner and/or occupant of the property. In effectuating the abatement of the nuisance created by the Unsafe Building Standard(s), the Board of Zoning Appeals may authorize and designate certain officers, personnel, and/or contractors of the Municipal Corporation to enter upon the property of such owner and to take all appropriate actions necessary to bring said property in compliance with the order of the Building Commissioner or other citing authority.

(Ord. 1981, passed 5-6-02)

§ 150.56 NOTIFICATION OF CHARGES.

The Board of Zoning Appeals shall, upon completion of all acts necessary to abate the nuisance created with respect to the Unsafe Building Standard(s), send a statement to the owner of the property notifying the owner of the fees and charges owing to the city for the services of abatement. Upon the failure of the owner to pay the fees and charges in full within 30 days, the Board of Zoning Appeals may cause charges and fees to be placed upon the tax duplicate and collect the same as taxes. The Board of Zoning Appeals may, in the alternative, refer the charges and fees to the City Attorney who shall forthwith collect the fees and charges by civil process.

(Ord. 1981, passed 5-6-02)

§ 150.57 VIOLATIONS.

In addition to the foregoing remedies created by the Unsafe Building Standard(s), for the abatement of a nuisance the Board of Zoning Appeals may after notice and hearing as prescribed under § 150.55 levy a fine against the owner of the property after a finding of violations of the subchapter in any amount allowed by § 10.99, per day of offense. Such fines may be collected by civil process by the City Attorney. The Board of Zoning Appeals may defer the fact finding and imposition of fines to the Elwood City Court, and thereby direct the Building Commissioner and/or the City Attorney to file legal action in said Court for violations of this subchapter in the name of the Board of Zoning Appeals against the owner of the property.

(Ord. 1981, passed 5-6-02)

CHAPTER 151: FLOOD HAZARD PREVENTION

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GENERAL PROVISIONS**§ 151.01 STATUTORY AUTHORIZATION.**

The Indiana Legislature has in I.C. 36-7-4 granted the power to local government units to control land use within their jurisdictions. Therefore, the Common Council of the City of Elwood does hereby adopt the following floodplain management regulations.
(Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

§ 151.02 FINDINGS OF FACT.

(A) The flood hazard areas of the City of Elwood 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.

(B) 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.
(Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

§ 151.03 STATEMENT OF PURPOSE.

It is the purpose of this chapter 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:

(A) 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.

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

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

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

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

(F) Make federal flood insurance available for structures and their contents in the City by fulfilling the requirements of the National Flood Insurance Program.
(Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

§ 151.04 OBJECTIVES.

The objectives of this chapter are:

(A) To protect human life and health.

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

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

(D) To minimize prolonged business interruptions.

(E) 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.

(F) 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.
(Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

§ 151.05 DEFINITIONS

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

A ZONE. 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 1% 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 1% 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 AH. Areas subject to inundation by 1% 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 AO. Areas subject to inundation by 1% 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 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). 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). 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. A request for a review of the floodplain administrator's interpretation of any provision of this chapter.

AREA OF SHALLOW FLOODING. 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 1% chance of being equaled or exceeded in any given year.

BASE FLOOD ELEVATION (BFE). The elevation of the 1% annual chance flood.

BASEMENT. That portion of a structure having its floor sub-grade (below ground level) on all sides.

BOUNDARY RIVER. The part of the Ohio River that forms the boundary between Kentucky and Indiana.

BOUNDARY RIVER FLOODWAY. The floodway of a boundary river.

BUILDING. See **STRUCTURE**.

COMMUNITY. A political entity that has the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction.

COMMUNITY RATING SYSTEM (CRS). 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. 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. 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.

- (1) Any man-made change to improved or unimproved real estate including but not limited to:
 - (a) Construction, reconstruction, or placement of a structure or any addition to a structure;
 - (b) 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;
 - (c) Installing utilities, erection of walls and fences, construction of roads, or similar projects;
 - (d) Construction of flood control structures such as levees, dikes, dams, channel improvements, and the like;
 - (e) Mining, dredging, filling, grading, excavation, or drilling operations;
 - (f) Construction and/or reconstruction of bridges or culverts;
 - (g) Storage of materials; or
 - (h) Any other activity that might change the direction, height, or velocity of flood or surface waters.

(2) ***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. 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. A certified statement that verifies a structure's elevation information.

EMERGENCY PROGRAM. 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. 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. 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. The Federal Emergency Management Agency.

FLOOD. 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). 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). 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). 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). The elevation of the regulatory flood plus two feet at any given location in the SFHA. (see **FREEBOARD**).

FLOODPLAIN. 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. 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. This chapter 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). 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. 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. 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. 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. Those portions of the floodplain lying outside the floodway.

HARDSHIP (as related to variances of this chapter). The exceptional hardship that would result from a failure to grant the requested variance, The City of Elwood 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. The highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a structure.

HISTORIC STRUCTURES. 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). 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). 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). 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). 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). 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). 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. The lowest elevation, after completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

LOWEST FLOOR. 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 square inch for every one square foot of enclosed area; the bottom of all such openings shall be no higher than one 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. 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. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MARKET VALUE. 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. 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). 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, a vertical control used as a reference for establishing varying elevations within the floodplain.

NEW CONSTRUCTION. 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. 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. 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. The flood that has a 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**. See **REGULATORY FLOOD**.

PHYSICAL MAP REVISION (PMR). An official republication of a community's FEMA map to effect changes to base (1% 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. 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. A vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred (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. 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. The flood having a 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 § 151.07. The **REGULATORY FLOOD** is also known by the term “base flood”, “one-percent annual chance flood”, and “100-year flood”.

REPETITIVE LOSS. Flood-related damages sustained by a structure on two separate occasions during a ten-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. 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). Those lands within the jurisdiction of the City subject to inundation by the regulatory flood. The SFHAs of the City of Elwood are generally identified as such on the Madison County, Indiana and Incorporated Areas Flood Insurance Rate Map dated June 9, 2014 and the Tipton County, Indiana and Incorporated Areas Dated June 9, 2014 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. 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. 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% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT. Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the “start of construction” of the improvement. This term includes structures that have incurred ‘repetitive less” 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. 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. A grant of relief from the requirements of this chapter, which permits construction in a manner otherwise prohibited by this chapter where specific enforcement would result in unnecessary hardship.

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

WATERCOURSE. 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. 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% 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%.

ZONE. 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. 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***.)

(Ord. 2110, passed 4-18-11; Am. Ord. 2191, passed 4-7-14; Ord. 2255, passed 9-12-16)

§ 151.06 LANDS TO WHICH THIS CHAPTER APPLIES.

This chapter shall apply to all SFHAs and known flood prone areas within the jurisdiction of the City of Elwood.

(Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

§ 151.07 BASIS FOR ESTABLISHING REGULATORY FLOOD DATA.

(A) The regulatory flood elevation, floodway, and fringe limits for the studied SFHAs within the jurisdiction of the City of Elwood shall be as delineated on the one-percent annual chance flood profiles in the Flood Insurance Study of Madison County, Indiana and Incorporated Areas dated June 9, 2014 and the corresponding Flood Insurance Rate Map dated June 9, 2014 and the Tipton County, Indiana and Incorporated Areas, Flood Insurance Study dated June 9, 2014 and the corresponding Flood Insurance Rate Map dated June 9, 2014 as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date.

(B) The regulatory flood elevation, floodway, and fringe limits for each of the SFHAs within the jurisdiction of the City of Elwood, delineated as an “A Zone” on the Madison County, Indiana and Incorporated Areas Flood Insurance Rate Map dated June 9, 2014 and the Tipton County, Indiana and Incorporated Areas Flood Insurance Rate Map dated June 9, 2014 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.

(C) 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.

(D) 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.
(Ord. 2110, passed 4-18-11; Am. Ord. 2191, passed 4-7-14; Ord. 2255, passed 9-12-16)

§ 151.08 ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT.

A floodplain development permit shall be required in conformance with the provisions of this chapter prior to the commencement of any development activities in areas of special flood hazard. (Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

§ 151.09 COMPLIANCE.

No structure shall hereafter be located, extended, converted or structurally altered within the SFHA without full compliance with the terms of this chapter and other applicable regulations. No land or stream within the SFHA shall hereafter be altered without full compliance with the terms of this chapter and other applicable regulations. (Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16) Penalty, see § 151.99

§ 151.10 ABROGATION AND GREATER RESTRICTIONS.

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

§ 151.11 DISCREPANCY BETWEEN MAPPED FLOODPLAIN AND ACTUAL GROUND ELEVATIONS.

(A) 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.

(B) 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.

(C) 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. (Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

§ 151.12 INTERPRETATION.

In the interpretation and application of this chapter all provisions shall be:

(A) Considered as minimum requirements.

(B) Liberally construed in favor of the governing body.

(C) Deemed neither to limit nor repeal any other powers granted under state statutes.
(Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

§ 151.13 WARNING AND DISCLAIMER OF LIABILITY.

The degree of flood protection required by this chapter 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 chapter does not create any liability on the part of the City of Elwood, the Indiana Department of Natural Resources, or the State of Indiana, for any flood damage that results from reliance on this chapter or any administrative decision made lawfully thereunder.

(Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

ADMINISTRATION

§ 151.25 DESIGNATION OF ADMINISTRATOR.

The Common Council of the City of Elwood hereby appoints the Building Commissioner to administer and implement the provisions of this chapter and is herein referred to as the Floodplain Administrator.

(Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

§ 151.26 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:

(A) *Application stage.*

(1) A description of the proposed development;

(2) Location of the proposed development sufficient to accurately locate property and structure(s) in relation to existing roads and streams;

(3) A legal description of the property site;

(4) A site development plan showing existing and proposed development locations and existing and proposed land grades;

(5) Elevation of the top of the planned lowest floor (including basement) of all proposed buildings. Elevation should be in NAVD 88 or NGVD;

(6) Elevation (in NAVD 88 or NGVD) to which any non-residential structure will be floodproofed; and

(7) 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 § 151.27(B)(6))

(B) *Construction stage.*

(1) 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 or professional engineer 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.

(2) 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 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.

(C) *Finished construction.* Upon completion of construction, an elevation certification (FEMA Elevation Certificate Form 81-31 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. (Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

§ 151.27 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.

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

(B) 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 chapter 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 §§ 151.44 and 151.46(A) of this chapter, 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 chapter.

(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 with § 151.26.

(12) Verify and record the actual elevation to which any new or substantially improved structures have been floodproofed in accordance with § 151.26.

(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 chapter shall immediately cease.

(b) Such notice shall be in writing and shall be given to the owner of the property, or to his or her 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 chapter, 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 chapter.

(Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

PROVISIONS FOR FLOOD HAZARD REDUCTION**§ 151.40 GENERAL STANDARDS.**

In all SFHAs and known flood prone areas the following provisions are required:

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

(B) 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;

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

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

(E) 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;

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

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

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

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

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

(K) 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.

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

(2) 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.

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

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

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

(6) 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.

(7) 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 subchapter.

(Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

§ 151.41 SPECIFIC STANDARDS.

In all SFHAs, the following provisions are required:

(A) In addition to the requirements of § 151.40, 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:

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

(2) 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).

(3) 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.

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

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

(6) Reconstruction or repairs made to a repetitive loss structure.

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

(B) *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 division (D) of this section.

(C) *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 division (D) of this section. Structures located in all "A Zones" may be floodproofed in lieu of being elevated if done in accordance with the following:

(1) 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 § 151.27(B)(12).

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

(D) *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:

(1) 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).

(2) 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.

(3) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.

(4) 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).

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

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

(7) Openings are to be not less than three 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.

(8) 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 this division (D). Periodic inspections will be conducted by the Floodplain Administrator to ensure compliance. The affidavit shall be recorded in the office of the Madison County Recorder or the Tipton County Recorder depending on location.

(9) 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 six 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 Madison County Recorder or the Tipton County Recorder depending on location.

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

- (1) The fill shall be placed in layers no greater than one 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;
- (2) The fill shall extend ten feet beyond the foundation of the structure before sloping below the BFE;
- (3) 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 three horizontal to one vertical;
- (4) The fill shall not adversely affect the flow of surface drainage from or onto neighboring properties;
- (5) The top of the lowest floor including basements shall be at or above the FPG; and
- (6) Fill shall be composed of clean granular or earthen material.

(F) *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:

- (1) 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:
 - (a) 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.
 - (b) 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 division (D) of this section.
 - (c) Flexible skirting and rigid skirting not attached to the frame or foundation of a manufactured home are not required to have openings.
- (2) 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:

(a) 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.

(b) 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 division (D) of this section.

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

(3) Recreational vehicles placed on a site shall either:

(a) be on site for less than 180 days;

(b) 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

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

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

(1) Shall not be used for human habitation;

(2) Shall be constructed of flood resistant materials;

(3) Shall be constructed and placed on the lot to offer the minimum resistance to the flow of floodwaters;

(4) Shall be firmly anchored to prevent flotation;

(5) Service facilities such as electrical and heating equipment shall be elevated or floodproofed to or above the FPG; and

(6) 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 division (D) of this section.

(H) *Above ground gas or liquid storage tanks.* All above ground gas or liquid storage tanks shall be anchored to prevent flotation or lateral movement.
(Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

§ 151.43 STANDARDS FOR SUBDIVISION PROPOSALS.

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

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

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

(D) 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 50 lots or five acres.

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

(F) All subdivision proposals shall ensure safe access into/out of SFHA for pedestrians and vehicles (especially emergency responders).
(Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

§ 151.43 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.
(Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

§ 151.44 STANDARDS FOR IDENTIFIED FLOODWAYS.

(A) Located within SFHAs, established in § 151.07, 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 I.C. 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. (I.C. 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).

(B) 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 §§ 151.40 through 151.47 of this chapter 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.

(C) 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 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.

(D) 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 C.F.R. § 65.12.
(Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

§ 151.45 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 §§ 151.40 through 151.47 of this chapter 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.
(Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

§ 151.46 STANDARDS FOR SFHAS WITHOUT ESTABLISHED BASE FLOOD ELEVATION AND/OR FLOODWAYS OR FRINGES.

(A) *Drainage area upstream of the site is greater than one square mile.*

(1) 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.

(2) 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 1% annual chance flood elevation and the recommended flood protection grade has been received from the Indiana Department of Natural Resources.

(3) 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 §§ 151.40 through 151.47 of this chapter have been met.

(B) *Drainage area upstream of the site is less than one square mile.*

(1) 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 1% annual chance flood elevation for the site.

(2) Upon receipt, the Floodplain Administrator may issue the local floodplain development permit, provided the provisions contained in §§ 151.40 through 151.47 of this chapter have been met.

(C) The total cumulative effect of the proposed development, when combined with all other existing and anticipated development, shall not increase the regulatory flood more than 0.14 of one foot and shall not increase flood damages or potential flood damages.

(Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

§ 151.47 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 §§ 151.40 through 151.47.

(Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

VARIANCE PROCEDURES

§ 151.60 DESIGNATION OF VARIANCE AND APPEALS BOARD.

The Board of Zoning Appeals shall hear and decide appeals and requests for variances from requirements of this chapter.

(Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

§ 151.61 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 chapter. Any person aggrieved by the decision of the Board may appeal such decision to the Madison County or Tipton County Circuit or Superior Court depending on location.

(Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

§ 151.62 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 chapter, and:

(A) The danger of life and property due to flooding or erosion damage;

(B) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(C) The importance of the services provided by the proposed facility to the community;

(D) The necessity of the facility to a waterfront location, where applicable;

(E) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

(F) The compatibility of the proposed use with existing and anticipated development;

(G) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(H) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(I) The expected height, velocity, duration, rate of rise, and sediment of transport of the floodwaters at the site; and

(J) 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.

(Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

§ 151.63 CONDITIONS FOR VARIANCES.

(A) Variances shall only be issued when there is:

(1) A showing of good and sufficient cause;

(2) A determination that failure to grant the variance would result in exceptional hardship; and

(3) 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.

(B) No variance for a residential use within a floodway subject to §§ 151.44 or 151.46(A) of this chapter may be granted.

(C) Any variance granted in a floodway subject to §§ 151.44 or 151.46(A) of this chapter will require a permit from the Indiana Department of Natural Resources.

(D) Variances to the provisions for flood hazard reduction of § 151.41 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.

(E) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(F) 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.

(G) 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 (§ 151.64).

(H) 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 (§ 151.64).

(Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

§ 151.64 VARIANCE NOTIFICATION.

(A) 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.

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

(Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

§ 151.65 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.

(Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

§ 151.66 SPECIAL CONDITIONS.

Upon the consideration of the factors listed in §§ 151.60 through 151.66, and the purposes of this chapter, the Common Council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

(Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

§ 151.99 PENALTY.

(A) 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 chapter. All violations shall be considered a common nuisance and be treated as such in accordance with the provisions of the Zoning Code for the City of Elwood. All violations shall be punishable by a fine not exceeding \$100.

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

(C) The Common Council of the City of Elwood 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.

(D) Nothing herein shall prevent the 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.
(Ord. 2110, passed 4-18-11; Ord. 2255, passed 9-12-16)

CHAPTER 152: SUBDIVISIONS

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GENERAL PROVISIONS**§ 152.001 AUTHORITY AND JURISDICTION.**

Authority for the administration of these regulations shall be vested in the Planning Commission of the city (hereinafter the “Commission”). There shall be no division of real estate, plat of a subdivision, or replat of a subdivision without the express prior approval of the Commission and no plat or replat of a subdivision of land located within the jurisdiction of the Commission shall be filed with the Auditor or recorded by the Recorder of Madison county until such plat or replat shall have been approved by the Commission, and such approval shall have been entered in writing on the plat by the president and secretary of the Commission.

(‘66 Code, § 3-4-2-1.1) (Ord. 1965, passed 2-5-2001)

§ 152.002 OBJECTIVES.

(A) The regulation of land subdivision has become widely recognized as a method of ensuring sound community growth and the safeguarding of the interests of homeowners, subdividers, and local governments. The citizens of this city need the assurance that residential subdivisions shall provide permanent assets to the community. This article should be viewed not as an end in itself, but as one tool or technique for the shaping of urban land according to the comprehensive zoning development plan of the community.

(B) The planning of a subdivision is the joint responsibility of the subdivider and the Commission, the former having the prime responsibility for the creation of desirable, stable neighborhoods that become an integral part of the entire city. Subdivision design and utility may enhance or depreciate the character and potentialities of the surrounding areas and stabilize or endanger an individual’s investment in a home.

(C) The Commission has the responsibilities of helping a subdivider achieve a high standard of excellence in the planning of a subdivision, and of informing all subdividers of the minimum standards and requirements of the city.

(‘66 Code, § 3-4-2-2.1 - 3-4-2-2.3) (Ord. 1965, passed 2-5-2001)

PRELIMINARY PLATS**§ 152.020 INFORMAL CONSIDERATION.**

From the standpoint of economy of time and money, it is highly recommended that the subdivider consult early and informally with the Commission. This shall enable the subdivider to become familiar with the requirements of these regulations as they affect the proposed development area and shall permit the Commission to determine conformity to the comprehensive zoning ordinance, and compliance with these regulations and with other city ordinances, so as to prevent unnecessary and costly revisions. The subdivider should present a sketch in inexpensive and tentative form showing in a general way the proposed development and the existing conditions within the area showing in a general way the proposed development, the existing conditions within the development area and of surrounding lands. The filing of a proposed sketch shall not require a formal application fee or filing of a preliminary plat, nor shall it be deemed a preliminary plat.

(‘66 Code, § 3-4-2-4.1) (Ord. 1965, passed 2-5-2001)

§ 152.021 APPLICATION.

The subdivider shall submit a written application, together with two copies of the preliminary plat to the President of the Commission, along with proof of payment of the filing fee, as specified in § 152.026. No application shall be considered at a meeting unless it has been filed with the Commission at least ten days before the date of such meeting.

(‘66 Code, § 3-4-2-4.2) (Ord. 1965, passed 2-5-2001)

§ 152.022 PRELIMINARY PLAT.

The preliminary plat shall show the manner in which the proposed subdivision is to be coordinated with the comprehensive zoning ordinance; school and recreational sites; shopping centers, community facilities; sanitation, water supply and drainage and other developments existing and proposed in the vicinity. No land shall be subdivided for residential use if in the opinion of the Commission, such land is unsuitable for such use by reason of flooding or improper drainage, objectionable earth and rock formation, topography, or any other feature harmful to the health and safety of possible residents and the community as a whole.

(‘66 Code, § 3-4-2-4.3) (Ord. 1965, passed 2-5-2001)

§ 152.023 HEARING.

If the Commission approves the application, the Commission shall set a date for a public hearing on the preliminary proposed plat giving notification to the subdivider. It shall be the responsibility of the subdivider to publish a notice of the hearing in a newspaper of general circulation printed and

published in Madison county, at least ten days prior to the date set for the hearing. The cost of publication of the notice of hearing shall be met by the subdivider.
(‘66 Code, § 3-4-2-4.4) (Ord. 1965, passed 2-5-2001)

§ 152.024 ACTION.

After the public hearing, the Commission shall take action on the preliminary plat in one of the following ways:

(A) If the Commission approves the preliminary plat as submitted, the Commission shall affix the Commission’s seal thereon.

(B) If the Commission approves the preliminary plat subject to certain conditions, the Commission shall set forth the conditions in the records of the meeting, and advise to the subdivider accordingly.

(C) The subdivider shall make the changes required by the Commission and resubmit the preliminary plat ten days prior to the next meeting of the Commission.

(D) The Commission shall consider the revised preliminary plat, without an additional public hearing, at the next regularly scheduled meeting; and if the Commission finds all conditions to be satisfied, the Commission’s seal shall be affixed on the preliminary plat indicating preliminary approval thereof.

(E) If the subdivider fails to resubmit a revised preliminary plat or to request, in writing, an extension of time for the resubmission thereof, the preliminary plat shall be considered as disapproved.

(F) If the Commission disapproves the preliminary plat as submitted, the Commission shall set forth the reasons in the records of the meeting and advise the subdivider accordingly.
(‘66 Code, § 3-4-2-4.5 - 3-4-2-4.5-3) (Ord. 1965, passed 2-5-2001)

§ 152.025 EFFECTIVE PERIOD OF PRELIMINARY APPROVAL.

Approval of the preliminary plat shall be effective for a maximum period of 12 months from the date of approval by the Commission, except that submission within this period of a final plat applying to a portion of the area covered by the preliminary plat shall extend the effective period of approval to a maximum of 24 months. If no final plat has been submitted to the Commission within 12 months of approval of the preliminary plat, the preliminary plat must be resubmitted to the Commission for approval.

(‘66 Code, § 3-4-2-4.6) (Ord. 1965, passed 2-5-2001)

§ 152.026 FEES.

An application for approval of a preliminary plat shall be accompanied by a certified check or money order, payable to the Clerk-Treasurer in such sum as may be periodically determined by the Common Council.

(‘66 Code, § 3-4-2-4.7) (Ord. 1965, passed 2-5-2001)

§ 152.027 EXEMPT PARCELS.

In the event a proposed subdivision is one acre or less in area and does not involve the extension of a street, the subdivider may dispense with preparation of a preliminary plat and to proceed directly with submission of a final plat.

(‘66 Code, § 3-4-2-4.8) (Ord. 1965, passed 2-5-2001)

§ 152.028 COMMENCEMENT OF CONSTRUCTION.

No grading, building or construction of any type relating to development of real estate shall be commenced except in accordance with this ordinance. Construction of buildings and dwellings shall be commenced only after issuance of building permits and no building permit, shall be issued prior to recordation of the final plat.

(‘66 Code, § 3-4-2-4.9) (Ord. 1965, passed 2-5-2001)

§ 152.029 PRELIMINARY PLAT REQUIREMENTS.

The subdivider shall provide the following information and material to the Commission as part of the preliminary plat application:

(A) Location map (which may be prepared by indicating the data by notation on available maps) showing:

- (1) Subdivision name and location;
- (2) Any thoroughfares related to the subdivision;
- (3) Existing elementary and high schools, parks and playgrounds, and other community facilities available for serving the proposed to be development area; and
- (4) Title, scale north point and date.

(B) A preliminary plat showing:

- (1) Proposed name of the subdivision;

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(2) Names and addresses of the owner, subdivider, land planning consultant, and engineer or surveyor, who prepared the plat;

(3) Streets and rights-of-way in the proposed development area and adjoining the site, showing the names (which shall not duplicate the other names of streets in the community, unless extensions of such streets), and including roadway widths, approximate gradients, types and widths of pavement, curbs, sidewalks, crosswalks, and other pertinent data;

(4) Easements, including locations, widths and purposes;

(5) Statement concerning the location and approximate size or capacity of utilities to be installed;

(6) Layout of lots showing dimensions, with lots being numbered consecutively throughout the entire subdivision;

(7) Parcels of land proposed to be declared or reserved for schools, parks, playgrounds or other public, semipublic or community purposes;

(8) Contours at vertical intervals of two feet if the general slope of the site is less than 10% and at vertical intervals of five feet if the general slope is greater than 10%;

(9) Tract boundary lines showing dimensions, bearings, angles, and references to section, township and range lines or corners;

(10) Building setback lines;

(11) Legend and notes;

(12) Other features or conditions which would affect the subdivision favorably or adversely; and

(13) A description of the protective covenants or private restrictions to be incorporated in the plat, or which will become covenants in the deeds for lots.

(C) The preliminary plat shall be drawn to a scale of 50 feet to one inch, or 100 feet to one inch; provided, however, if the resulting drawing would be more than 36 inches in the shortest dimension, such scale as recommended by the Commission.

(D) No preliminary plat shall be accepted by the Commission unless accompanied by a letter of approval of the storm water development plan from the appropriate agency as follows:

(1) Subdivisions within the corporate limits of the city shall have a letter of approval from the city Building Commissioner; and

(2) Subdivisions outside the corporate limits shall have a letter of approval from the County

Engineer and from the County Surveyor indicating compliance with the County Drainage Board's standards.

('66 Code, § 3-4-2-5.1) (Ord. 1965, passed 2-5-2001)

FINAL PLATS

§ 152.040 PROCEDURE FOR FINAL PLAT APPROVAL.

(A) The procedure for submission of a final plat shall be as follows:

(1) After approval of the preliminary plat by the Commission, the subdivider shall apply in writing to the Commission for approval of a final plat.

(2) The application shall be in triplicate and shall be accompanied by an original and three prints.

(3) The final plat may constitute only that portion of an approved preliminary plat which is proposed to be recorded and developed at the time of application; provided, however, such portion shall conform to all requirements this chapter.

(B) A proposed final plat shall not be considered unless in agreement with the specifications required in approved preliminary plat and accompanied by the required documents hereinafter set forth.

(C) The Commission shall not consider any final plat until the subdivider has guaranteed the completion of all required improvements within a reasonable period and in compliance with working drawings and specifications. This guarantee shall consist of the following:

(1) A bond or other satisfactory surety which shall:

(a) Run to the city;

(b) Specify the time for the completion of the improvements and installations;

(c) Be in an amount determined by the Commission to be sufficient to compete the improvements and installations in compliance with this chapter; and

(d) Be with a security satisfactory to the Commission.

(2) The city is authorized to complete the improvements and installations on the failure of the Subdivides to do so within the stated time. Funds received from such bond shall be used by the city for the completion of the improvements and installations.

(D) The Commission shall consider the application and final plat, without public hearing, at the next regular monthly meeting following submittal.

(E) The Commission shall take action on the final plat in one of the following ways:

(1) If the Commission approves the final plat, the Commission shall place a certification thereof on the original drawing; or

(2) If the Commission disapproves the final plat, the Commission shall set forth the reasons for disapproval and recommendations for correction in the records of the meeting, and advise the Subdivides accordingly.

(F) After approval of the final plat and certification by the Commission, the final plat shall be recorded in the Office of the Recorder of Madison County. All costs for recording shall be borne by the subdivider.

(G) (1) Approval of the final plat shall not be deemed to constitute or affect an acceptance by the city of any improvements shown on the plat, such acceptance shall be by the City Council in accordance with the further provisions hereof.

(2) Approval of the final plat shall be null and void if the plat is not acceptable for recording or is not recorded, in the Office of the Recorder of Madison County with six months from the date of approval by the Commission.

(H) If the final plat conforms substantially to the preliminary plat as approved, the Commission shall give final plat approval.

('66 Code, § 3-4-2-6) (Ord. 1965, passed 2-5-2001)

§ 152.041 FINAL PLAT REQUIREMENTS.

The following information shall be shown on the final plat:

(A) Accurate boundary lines, with dimensions and angles, which provide a survey of the tract, closing with an error of not more than one foot in 20,000 feet;

(B) Accurate distances and directions to the nearest established street corners or officials monuments. Reference corners shall be accurately described on the plat;

(C) Accurate locations of all existing and recorded streets intersecting the development tract;

(D) Accurate metes and bounds descriptions of the boundaries of the development area;

(E) Source of title to the land to be subdivided as shown by the books of the County Recorder;

(F) Street names of all streets within and adjoining the development area;

(G) Complete notes for all curbs, streets, and sidewalks, including curves and radii;

(H) Street lines with accurate dimensions in feet and hundredths of feet, with angles to street, alley, and lot lines;

(I) Lot numbers and dimensions;

(J) Accurate locations of easements for utilities and any limitations on such easements;

(K) Accurate dimensions for any property to be dedicated or reserved for public, semipublic or community use;

(L) Building setback lines and dimensions;

(M) Location, type, material and size of all monuments and lot markers;

(N) Plans and specifications for any improvements required by the Commission;

(O) Restrictions of all types which shall run with the land and become covenants in the deeds for lots;

(P) Name of the subdivision;

(Q) Name and address of the owner and the subdivider;

(R) North point, scale and date;

(S) Certification by a registered land surveyor;

(T) Certification of dedication of streets and other public property;

(U) Certificate for approval by the Commission;

(V) Certificate for approval by the Board of County Commissioners if the plat lies wholly, or partly, beyond the city limits; and

(W) The original drawing of the final plat of the subdivision shall be drawn to a scale of 50 feet to one inch, provided that if the resulting drawing would be more than 36 inches in shortest dimensions, a scale of 100 feet to one inch may be used.

('66 Code, § 3-4-2-7) (Ord. 1965, passed 2-5-2001)

OTHER REQUIREMENTS**§ 152.060 MONUMENTS AND MARKERS.**

(A) Monuments and markers shall be set by a registered land surveyor.

(B) Monuments and markers shall be placed so that the center of the pipes or marked points shall coincide exactly with the intersection of lines to be marked, and shall be set so that the top of the monuments or markers are level with the finished grade.

(C) Monuments shall be set as follows:

- (1) At the intersection of all lines forming angles in the boundary of the subdivision; and
- (2) At the intersection of street property lines.

(D) Markers shall be set as follows:

- (1) At the beginning and ending of all curves along street property lines;
- (2) At all points where lot lines intersect curves, either front or rear;
- (3) At all angles in property lines of lots; and
- (4) At all other lot corners not established by a monument.

(E) Monuments shall be of stone, precast concrete, or concrete poured in place with minimum dimensions of three inches by three inches by 36 inches set vertically in place. They shall be marked on top with an iron or a copper dowel set flush with the top of the monument. Markers shall consist of iron pipes or steel bars at least 24 inches long, and not less than 5/8 inch in diameter.

('66 Code, § 3-4-2-8) (Ord. 1965, passed 2-5-2001)

§ 152.061 IMPROVEMENTS.

(A) The Commission may require one or more of the following improvements, depending upon the nature and scope of the subdivision. Particular attention shall be given to means for disposition of storm water and to the desirability of curbs and gutters or other provisions to prevent a breakdown of pavement edges. The design, layout and carrying capacities of storm water, sanitary sewer, and water facilities shall recognize the future requirements of adjacent undeveloped areas. The types of improvements, if required by the Commission, shall conform to the engineering standards of the city.

(B) Required improvements may include the following:

- (1) Street and alley grading and surfacing;
- (2) Grading and surfacing of off-street parking lots and loading docks;
- (3) Curbs and gutters;
- (4) Sidewalks of specific type or construction;
- (5) Sanitary sewerage facilities;
- (6) Water mains and hydrants;
- (7) Storm water drainage facilities;
- (8) Street signs;
- (9) Streetlights;
- (10) Driveways;
- (11) Survey monuments and markers;
- (12) Street trees; and
- (13) Compacted fill.

('66 Code, § 3-4-2-9) (Ord. 1965, passed 2-5-2001)

§ 152.062 INSPECTION AND GUARANTEES.

(A) (1) All improvements shall be subject to inspection by the city Building Commissioner, during construction and after construction is complete.

(2) The Commission shall have authority over materials of construction, methods of construction and workmanship to ensure compliance with working drawings and specifications. The subdivider shall provide for reasonable tests and proof of quality of materials as requested by the city Building Commissioner. Upon due cause, the Commission may require that work be suspended. Due cause shall include weather conditions, questionable materials of construction, methods of construction, workmanship or nonadherence to specifications and drawings.

(B) Approval by the Commission or inspection by the city Building Commission shall in no way relieve the subdivider or his contractors of full responsibility for adherence to specifications and working drawings or for maintaining high standards of materials, methods and workmanship.

(C) Approval by the Commission shall not be deemed acceptance of the improvement by the city. Acceptance shall be only by action of the City Council, and acceptance shall be contingent upon a favorable inspection report from the Commission.

(D) As further assurance of serviceable construction and to provide for repair and damage resulting from subsequent construction operations of the subdivider or his contractors, the subdivider shall be responsible for all maintenance of an improvement until acceptance by the City Council. In addition the subdivider shall be responsible for all maintenance of roadways, curbs and gutters, sidewalks, parkway strips and extension boxes and hydrants of water facilities until all construction work has been completed within the entire development area as described in the preliminary plat.

('66 Code, § 3-4-2-10.1 - 3-4-2-10.2) (Ord. 1965, passed 2-5-2001) Penalty, see § 10.99

§ 152.063 ACCEPTANCE OF IMPROVEMENTS.

Acceptance of an improvement for the city shall be by resolution of the City Council. Acceptance shall be contingent upon:

(A) Fulfillment of the requirements of this chapter;

(B) An opinion of the City Attorney that satisfactory and proper conveyances have been made by the subdivider to the city;

(C) All improvements being complete and in good repair in accordance with city standards and requirements;

(D) Inspection reports from the Commission and/or Building Commission indicating compliance with working drawings and specifications of the plat;

(E) No single improvement shall be accepted in part. All improvements shall be complete throughout the subdivision as indicated in the preliminary and final plats and working drawings. The subgrade, and base course of a street, alley, sidewalk shall be considered as a single improvement; and

(F) Acceptance of an improvement shall constitute release of the applicable portion of the performance bond or of the applicable portion of the balance of cash deposit.

(G) To defray engineering and inspection expenses incurred by the city in checking working drawings, specifications, and in executing inspection responsibilities, the subdivider shall be required to reimburse the city for the following, which are separate and distinct charges from the application fee paid at the time of submission of the preliminary plat:

(1) The Commission shall appoint the Building Commissioner or a representative for the inspection work. The fee paid for such services shall be at the same rate as paid the Building Commissioner or representative as an employee of the city. The inspection time spent by the Inspector shall to be determined by the Commission.

(2) The subdivider, and the subdivider's contractors and suppliers shall be jointly and severally responsible that existing improvements and the property of the city are not damaged or rendered less useful or unsightly by any operation or construction or construction activity of the subdivider, his contractors or suppliers. This provision is intended to include damage or nuisance with respect to the land, improvements or landscaping of the city; damage to existing streets, sidewalks, curbs, gutters, and parkways by passage of equipment or trucks or by excavation for any purpose; the spillage or tracing of earth, sand or rock onto existing streets, sidewalks, curbs and gutters, and parkways; the washing by storm water of earth or sand onto streets, sidewalks, curbs, gutters, and parkways or into catch basins; damage to water mains, sanitary sewers, culverts or storm sewers. To reduce or localize the possibility of damage to streets by heavy trucking, the Commission shall instruct the subdivider as to the streets to be used to access to the subdivision by equipment and trucks, and the subdivider shall be responsible for enforcement of this instruction upon all contractors and suppliers. The subdivider shall make provisions to prevent washing of earth or sand onto sidewalks, streets, curbs and gutters, and into catch basins by storm water. Where deemed advisable, the Commission shall have the power to require, either prior to commencement of construction or after construction is in process, that the subdivider post a surety to guarantee repair of damages or abatement of nuisance. Where need for surety becomes apparent after construction is in process, the Commission shall have the power to order construction discontinued until a surety has been posted. Expenses incurred by the city in repairing damages, and cleaning streets, catch basins, and sewers shall be deducted from the surety.

('66 Code, § 3-4-2-10.3 - 3-4-2-10.4) (Ord. 1965, passed 2-5-2001)

§ 152.064 STREETS AND ALLEYS.

(A) The street and alley layout shall provide access to all lots and parcels of land within the subdivision, and where streets cross other streets, jogs shall not be created.

(B) Proposed streets shall be adjusted to the contour of the land so as to produce usable lots and streets of reasonable gradient.

(C) Certain proposed streets, where appropriate, shall be extended to the boundary line of the tract to be subdivided, so as to provide for normal circulation of traffic within the vicinity.

(D) Wherever there exists a dedicated or platted portion of a street or alley adjacent to the proposed subdivision, the remainder of the street or alley within the proposed subdivision shall be platted to the same width.

(E) Widths of arterial streets and collector streets shall conform to the widths specified in the thoroughfare plan.

(F) The minimum right-of-way or residential streets, marginal access streets or cul-de-sacs, shall be 50 feet. All cul-de-sacs shall terminate in a circular right-of-way with a minimum diameter of 100 feet, with an effective turning radius of 40 feet.

(G) Alleys may be permitted in residential districts, but shall be required in commercial and industrial areas where needed for loading and unloading or access purposes. Where required, alleys shall be at least 20 feet in width.

(H) The center lines of streets should intersect as nearly at right angles as possible.

(I) At intersections of streets and alleys, property line corners shall be rounded by arcs of at least 20 feet radii or by chords of such arcs.

(J) At intersections of streets and property line corners shall be rounded by arcs with radii of not less than 20 feet, or by chords of such arcs.

(K) If the smaller angle of intersection of two streets is less than 60 degrees, the radius of the arc at the intersection of property lines shall be increased as deemed advisable by the Commission.

(L) Intersections of more than two streets at one point shall be avoided.

(M) Where parkways or special types of streets are involved, the Commission may apply special standards to be followed in their design.

(N) Whenever the proposed subdivision contains or is adjacent to a railroad right-of-way or a highway designated as a "limited access highway" by the appropriate highway authorities, provision shall be made for a marginal access street, or a parallel street at a distance acceptable for the appropriate use of the land between the highway or railroad and such streets.

(O) Horizontal visibility on curved streets and vertical visibility on all streets must be maintained along the center lines as follows:

- (1) Arterial streets: 500 feet;
- (2) Collector streets and parkways: 300 feet; and
- (3) Residential streets: 150 feet.

(P) Curvature measured along the center line shall have a minimum radius as follows:

- (1) Arterial streets: 500 feet;
- (2) Collector streets and parkways: 300 feet; and
- (3) Residential streets: 150 feet.

(Q) Between reversed curves on arterial streets there shall be a tangent of not less than 100 feet and on collector and residential streets such tangent shall be not less than 50 feet.

(R) Maximum grades for streets shall be as follows:

- (1) Arterial streets, not greater than 6%; and
- (2) Collector and residential streets and alleys, not greater than 10%.

(S) The minimum grade of any street gutter shall not be less than 0.3%.
(‘66 Code, § 3-4-2-11) (Ord. 1965, passed 2-5-2001)

§ 152.066 BLOCKS.

(A) Blocks shall not exceed 1,320 feet in length.

(B) Blocks shall be of sufficient width to permit two tiers of lots of appropriate depth, except where an interior street parallels a limited access highway or an arterial street or a railroad tight-of-way.

(C) Cul-de-sac streets shall not be more than 600 feet in length measured along their center line from the center line of the street of origin to the center point of the turnaround.
(‘66 Code, § 3-4-2-12) (Ord. 1965, passed 2-5-2001)

§ 152.067 LOTS.

(A) All lots shall abut on a street unless specifically approved by the Commission.

(B) Side lines of lots shall be at approximately right angles to straight streets and on radial lines on curved streets. Some variation from this rule is permissible, but pointed or irregular lots should be avoided.

(C) All lot sizes shall be in conformity to the provisions of the Comprehensive Zoning Ordinance, Chapter 153 of this code.

(D) Lots shall be numbered consecutively throughout the entire subdivision.
(‘66 Code, § 3-4-2-13) (Ord. 1965, passed 2-5-2001)

§ 152.068 STORM WATER DRAINAGE.

(A) Lots and blocks shall be so graded as to eliminate depressions that would accumulate storm water. Grades at building sites shall bear such relationships to roadway and curb grads as to prevent flooding of basement windows or of entryways during heavy storms. The subdivider shall submit working drawings showing contours to which the property is to be graded. The grading and storm water control plans must be approved city Building Commissioner prior to any construction.

(B) All watercourses crossed by streets or alleys shall be provided with adequate and permanent culverts of a size, type, and material approved by the Commission. Culverts on existing streets shall be enlarged wherever necessary by reason of diverted or increased concentration of drainage. Adequate fences and barriers shall be provided in connection therewith.

(C) All subdivisions shall be provided with provisions for controlling the quantity of storm water which is generated by the new improvements.

(D) As hereinabove provided, a development plan for the storm water control shall be prepared and certified by a professional engineer or registered land surveyor in accordance with city standards and shall be submitted and approved as follows:

(1) For subdivisions located within the city's corporate limits, the development plan shall be submitted to the Commission for review and approval; or

(2) For subdivisions located outside the city's corporate limits, the development plan shall be submitted to the County Engineer and County Surveyor.
(‘66 Code, § 3-4-2-14) (Ord. 1965, passed 2-5-2001)

§ 152.069 EASEMENTS.

(A) Where alleys are not provided, easements for utilities shall be provided. Such easements shall have a minimum width of 20 feet, and where located along lot lines, ½ of the width shall be taken from each lot. Easements shall be contiguous to the street at the end of the block to connect with adjoining blocks in the shortest direct line. Before determining the location of easements, the plan shall be discussed with the local public utility companies to ensure proper placing for the installation of such services.

(B) Where a subdivision is traversed by a watercourse, drainage way, channel or stream, there shall be provided an adequate storm water easement or drainage right-of-way conforming substantially with the lines of such water course which must be reviewed and approved by the County Drainage Board or County Surveyor.
(‘66 Code, § 3-4-2- 15) (Ord. 1965, passed 2-5-2001)

§ 152.070 SETBACKS.

Building setback lines shall be as provided in the Comprehensive Zoning Ordinance, Chapter 153 of this code.
(‘66 Code, § 3-4-2-16) (Ord. 1965, passed 2-5-2001)

ADMINISTRATION AND ENFORCEMENT**§ 152.090 REQUIRED CERTIFICATES.**

The certificates required under this chapter, including but not limited to, Commission Certificate, Land Surveyor Certificate, Deed of Dedication, Owner's Certificate, and Notarization Certificate, shall be in such form as adopted by the City Council from time to time. The forms shall be available for public inspection in the office of the City Clerk.

§ 152.091 OTHER REGULATIONS PREVAIL.

None of the provisions of this chapter pertaining to permission, surety, fees, acceptance and approval shall be construed as exempting subdividers, general contractors, sidewalk contractors, cement contractors, building contractors, plumbing contractors, or plumbers, sewer contractors, sewer builders, drain layers, electrical contractors, electricians or any other contractor or craftsman from any other ordinance of the city or regulation of the state with respect to licenses, fees, inspections or permits of any type.

('66 Code, § 3-4-2-10.5) (Ord. 1965, passed 2-5-2001)

CHAPTER 153: ZONING

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GENERAL PROVISIONS

§ 153.01 TITLE.

The official title of this chapter is the “City of Elwood Zoning Ordinance.”
(‘66 Code, § 3-1-1-1) (Ord. 1172, passed 10-3-66)

§ 153.02 DEFINITIONS.

(A) For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(B) Words used in the present tense shall include the future. The singular number shall include the plural, and the plural the singular. The word “shall” is mandatory, not permissive.

ACCESSORY USE. A use customarily incidental and subordinate to the principal use and located on the same lot as the principal use.

AGRICULTURE. Any use of land or structures for farming, dairying, pasturage, **AGRICULTURE**, horticulture, floriculture, aboriculture or animal or poultry husbandry. Accessory uses permitted in conjunction with an agricultural use may include barns, stables, corn cribs, silos and any other use or structure that is clearly a part of agricultural operation.

AREA. A calculation of dimensions derived by horizontal projection of the site.

BASEMENT. A story having more than 50% of its clear height below finished grade.

BOARD. The Board of Zoning Appeals established by this chapter.

CLINIC. Any establishment where human patients are examined and treated by doctors or dentists, but not hospitalized overnight.

CLUB. An establishment operated for social, recreational or educational purposes but open only to members and not to the general public.

COMPATIBILITY STANDARDS FOR MANUFACTURED HOUSING.

- (1) The main body of the house shall be rectangle.
- (2) The main roof shall be pitched, rather than flat.
- (3) The house shall face the street. Usually, this means that the long axis will be parallel to the street.
- (4) The exterior walls shall look like wood or masonry, regardless of their actual composition.
- (5) The main roof shall be shingled.
- (6) The foundation shall form a complete enclosure under exterior walls.
- (7) Apparent bulk shall be about the same throughout the neighborhood. There is no objection to an occasional larger house, but none shall be permitted that looks substantially smaller than the general run.

COVERAGE. The percentage of the lot area covered by principal and accessory use structures.

DWELLING, MULTIPLE-FAMILY. A residential building designed for two or more families, with the number of families in residence not exceeding the number of dwelling units provided.

DWELLING, SINGLE FAMILY. A detached residential dwelling unit, other than a mobile home, designed for and occupied by not more than one family only.

DWELLING, TWO-FAMILY. A detached residential building containing two dwelling units, designed for and occupied by not more than two families.

DWELLING UNIT.

- (1) Any structure or part of a structure designed or used as the living quarters for one family and containing culinary facilities, private and complete bathroom facilities and appropriate water, sewage, heating and lighting facilities and used exclusively for residential occupancy. It shall not include a hotel, motel, lodging house or tourist home.

(2) Any structure, whether conventionally built or manufactured shall have a minimum width of 23 feet and exceed 950 square feet of occupied space. It shall be so constructed as to be a permanent foundation.

ESSENTIAL SERVICES. The erection, construction, alteration or maintenance by public utilities or municipal or other governmental agencies of underground or overhead gas, electrical, stream or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduit cables, fire alarm boxes, police call boxes, traffic signals, hydrants, street signs and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of adequate service by public utilities or municipal or other governmental agencies or for the public health or safety or general welfare but not including buildings.

FAMILY. One or more persons occupying a premise and living as a single housekeeping unit as distinguished from a group occupying a boarding house, lodging house, club, fraternity or hotel.

FOUNDATION, PERMANENT. Any structural system transposing loads from a structure to the earth at a depth below the established frost line without exceeding the safe, bearing capacity of the supporting soil.

FRONT YARD. The space not containing any structures between a structure and thoroughfare right-of-way line.

HOME OCCUPATION. An occupation carried on in a dwelling unit which is clearly incidental and secondary to the use of the building for dwelling purposes, and which does not change the character of the unit as a dwelling.

LOT. A parcel of land occupied or capable of being occupied by one or more structures.

LOT, DEPTH OF. A mean horizontal distance between the front and rear lot lines.

LOT, MINIMUM AREA OF. The horizontally projected area of a lot computed exclusive of any portion of the rights-of-way of any public thoroughfare.

LOT OF RECORD. Any lot which individually or as a part of a subdivision, has been recorded in the office of Recorder of Deeds of the County.

LOT, WIDTH OF. The mean width measured at right angles to its depth.

MANUFACTURED HOMES. A dwelling unit fabricated on or after June 15, 1976, in an off-site manufacturing facility for installation or assembly at the building site, bearing a seal certifying that it is built in compliance with the federal Manufactured Housing Construction Safety Standards Code and all acts amendatory thereto, as promulgated by the Indiana Administrative Building Council and its successors. In addition, said manufactured homes are further defined as 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. A manufactured home does not include a recreational vehicle, but specifically includes a modular home as further defined in this chapter.

MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS CODE. Title IV of the *1974 Housing and Community Development Act* (42 USC 5401 *et seq.*), as amended and previously known as the federal *Mobile Home Construction and Safety Act*, rules and regulations adopted thereunder, which include H.U.D.-approved information supplied by the home manufacturer and regulations and interpretations of the code by the Indiana Administrative Building Council.

MANUFACTURING, GENERAL. The manufacturing, processing, assembling, fabrication or repairing of any materials or products where no continuous process involved will produce noise, vibration, electrical disturbance, air pollution, water pollution, heat, glare, waste matter, odor or fire hazard which will disturb or endanger neighboring property and where some operations and storage may be in open areas.

MANUFACTURING, LIGHT. The manufacturing, processing, assembling, fabrication or repairing of certain materials or products where no process involved will produce noise, vibration, heat, glare, waste matter, odor or fire hazard which will disturb or endanger neighboring property and where all operations and storage are entirely within enclosed buildings or area.

MOBILE HOME. A transportable structure larger than 320 square feet, designed to be used as a year-round residential dwelling and built prior to the enactment of the federal *Mobile Home Construction and Safety Act of 1974*, which became effective for all mobile home construction June 15, 1976.

MOBILE HOME PARK. An area of land under single ownership used for the parking of two or more occupied mobile homes.

MODULAR HOME. A factory fabricated transportable building designed to be used alone or to be incorporated with similar units at a building site designed and constructed with a perimeter frame to become a permanent structure on a site, with all outside walls supported by a permanent foundation.

MULTIPLE WIDE UNIT. A manufactured housing unit manufactured to be connected to produce a unit over 23 feet in width and over 39 feet or more of its length.

NONCONFORMING STRUCTURE. A structure designed, converted or adapted for a use prior to the adoption of provisions prohibiting the use in the location.

NONCONFORMING USE. Any use or arrangement of land or structures legally existing on or after February 1, 1975, which does not conform to the provisions of this chapter.

OCCUPIED SPACE. The total area of earth horizontally covered by the structure, excluding accessory structures such as, but not limited to, garaged, patios and porches.

ONE- AND TWO-FAMILY DWELLING CODE, INDIANA. The mandatory statewide building code adopted by the Indiana Administrative Building Council for one- and two-family residential dwellings.

PERSON. An individual, firm, partnership, corporation, company, association, joint stock association or body politic, and includes a trustee, receiver, assignee, administrator, executor, guardian or other representative.

PUBLIC LAW 360, ACTS OF 1971. Enabling legislation requiring the Indiana Administrative Building Council to adopt rules and regulations for the construction, repair or maintenance of factory-constructed one- or two-family residential dwellings.

SINGLE WIDE UNIT. A manufactured housing unit, not counting tip-outs, whose width is less than 23 feet.

SPECIAL EXCEPTION PERMITS. A device for permitting a use within a district other than a principally permitted use.

STRUCTURE. Anything constructed or erected, the use of which requires a fixed location on the ground, including, in addition to buildings, billboards, carports, porches and other building features, but not including things such as sidewalks, drives, fences and patios.

SUPPLY YARDS. A commercial establishment storing or offering for sale building supplies, steel supplies, coal, heavy equipment, feed, grain and similar goods. **SUPPLY YARDS** do not include the wrecking, salvaging, dismantling or storage of automobiles and similar vehicles.

UNDERFLOOR SPACE. That space between the bottom of the floor joists and the earth.

WIDTH AND LENGTH. In structures having right angles, **WIDTH** is the shorter axis in linear measurement from side to side of the structure and measures at right angles to the longest axis of the structure, which is the **LENGTH**. An axis of a structure is not a rectangle in shape, then the **WIDTH** shall be the measurement determined by dividing the occupied space by the **LENGTH**. ('66 Code, § 3-1-7-1) (Ord. 1510, passed - -; Am. Ord. 1549, passed 7-12-82; Am. Ord. 1623, passed 8-5-85; Am. Ord. 1623, passed 5-6-96; Am. Ord. 1980, passed 5-6-02)

§ 153.03 AUTHORITY.

This chapter is adopted pursuant to Chapter 174 of the Acts of the General Assembly of Indiana, 1947, and all acts supplemental and amendatory thereto. (I.C. 36-7-4) ('66 Code, § 3-1-1-2) (Ord. 1172, passed 10-3-66)

§ 153.04 JURISDICTION.

This chapter shall apply to all incorporated land within the city and any unincorporated land as provided by state law. ('66 Code, § 3-1-1-4) (Ord. 1172, passed 10-3-66)

§ 153.05 APPLICATION.

It is not intended by this chapter to interfere with, abrogate or amend any existing easements, covenants or other agreements between parties, relating to the use of buildings or premises. Where this chapter imposes a greater restriction upon the use of buildings or premises than imposed or required by existing provisions of law or by regulations, agreements or covenants, the provisions of this chapter shall control, but where private covenants, agreements or regulations impose a greater restriction than is imposed by this chapter, the greater restriction shall control.

(‘66 Code, § 3-1-1-5) (Ord. 1172, passed 10-3-66)

§ 153.06 COMPLIANCE.

No structure shall be located, erected, constructed, reconstructed, moved, converted or enlarged, nor shall any structure or land be used or be designed to be used, except in full compliance with all provisions of this chapter and after the lawful issuance of the permits required by this chapter.

(‘66 Code, § 3-1-1-3) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 153.07 AMENDMENTS.

(A) The Council may introduce and consider amendments to this chapter and to the zone maps as proposed by Council, by the Plan Commission or by a petition by the owners of 50% or more of the area involved in, or defined by, the petition. (‘66 Code, § 3-1-6-1)

(B) Petitions for amendment shall be filed with the Clerk-Treasurer, and the petitioner at the time of filing shall pay the required filing fee in accordance with § 153.73. If the Plan Commission originates a petition, it shall not pay a filing fee. The petitioner shall assume the cost of any required public notice. (‘66 Code, § 3-1-6-2)

(C) Any proposed amendment not originating from the Plan Commission shall be referred to the Plan Commission for consideration and report before any final action is taken by Council. The Plan Commission shall hold a public hearing, as prescribed by law and report its findings and recommendations in writing to the Council within the reasonable time after the public hearing as the Council may specify in the referring action. (‘66 Code, § 3-1-6-3)

(D) After receiving the Plan Commission’s report, City Council may proceed to take action on the proposed amendment. In the event the report of the Plan Commission is adverse to the proposed amendment, the amendment ordinance shall not be passed except by an affirmative vote of at least 75% of the members of Council. Failure of Council to pass the proposed amendment ordinance by the affirmative vote within 90 days after its rejection by the Plan Commission shall constitute rejection of the proposed amendment and it shall not be reconsidered by the Plan Commission or Council until the expiration of one year after the date of its original rejection by the Plan Commission. (‘66 Code, § 3-1-6-4)

(Ord. 1172, passed 10-3-66)

DISTRICT REGULATIONS**§ 153.20 ADOPTION OF COMPREHENSIVE PLAN.**

A map entitled “The Elwood Comprehensive Plan” is hereby adopted as part of this chapter with the map subject to modification by reason of annexation or other changes to the city boundaries subsequent to the original adoption of the map in 1975.

(‘66 Code, § 3-1-2-1) (Ord. 1172, passed 10-3-66)

§ 153.21 ZONING DISTRICTS ESTABLISHED.

The city and its unincorporated jurisdictional areas are divided into the districts stated in this section as shown by the district boundaries on the zone maps. The districts are:

- (A) C-1, Conservation;
- (B) A-1, Agriculture-Low Density Residential;
- (C) R-1, Medium Density Residential;
- (D) R-2, Medium-High Density Residential;
- (E) R-3, High Density Residential;
- (F) B-1, Limited Business;
- (G) B-2, Central Business District;
- (H) B-3, General Business;
- (I) I-1, Light Industrial; and
- (J) I-2, Heavy Industrial.

(‘66 Code, § 3-1-2-2) (Ord. 1172, passed 10-3-66)

§ 153.22 DISTRICT BOUNDARIES.

District boundaries shown within the lines of streets, streams and transportation rights-of-way shall be deemed to follow their centerline. The vacation of streets shall not effect the location of the district boundaries. When the Zoning Administration cannot definitely determine the location of a district boundary by the centerline, by the scale or dimensions stated on the zone map or by the fact that it

clearly coincides with a property line, he shall refuse action and the Board of Zoning Appeals upon appeal shall interpret the location of the district boundary with reference to the scale of the zone map and the purposes set forth in all relevant provisions of this chapter.

(‘66 Code, § 3-1-2-3) (Ord. 1172, passed 10-3-66)

§ 153.23 C-1 CONSERVATION.

The district designated for conservation, C-1, is limited to agricultural, recreational and certain other open land uses. Residential and related uses may be permitted if approved by the Board of Zoning Appeals. The purpose of this district is to prevent intensive development of land that is unsuitable for development because of topography, soil condition, periodic flooding or other natural features.

(‘66 Code, § 3-1-2-4) (Ord. 1172, passed 10-3-66)

§ 153.24 A-1 AGRICULTURE.

The district designed for agriculture, low density residential use, A-1, is intended to preserve and protect agricultural land from desirable urban growth while permitting limited residential development on large size lots which provide adequate space for private water and sewerage facilities. Planned residential subdivisions with smaller size lots may be approved by the Board of Zoning Appeals if the development provides for common utilities systems and meets the requirements of § 153.50 of this chapter.

(‘66 Code, § 3-1-2-5) (Ord. 1172, passed 10-3-66)

§ 153.25 RESIDENTIAL DISTRICTS.

Districts designed for residential use, R-1, R-2 and R-3, are limited to dwellings and public and/or semi-public uses which are normally associated with residential neighborhoods. The purpose of these three districts is to create an attractive, stable and orderly residential environment. However, the families per dwelling and the lot and yard requirements are different in the three districts to provide for the various housing needs and desires of the citizens.

(‘66 Code, § 3-1-2-6) (Ord. 1172, passed 10-3-66)

§ 153.26 BUSINESS DISTRICTS.

The districts designed for business, B-1, B-2 and B-3, are limited to business, public and certain residential uses. By establishing compact districts for such uses, more efficient traffic movement, parking facilities, fire protection and police protection may be provided. Industrial uses are excluded in order to reduce the hazards caused by extensive truck and rail movements normally associated with such uses. The purpose of these districts is to provide unified shopping districts conveniently located.

(‘66 Code, § 3-1-2-7) (Ord. 1172, passed 10-3-66)

§ 153.27 INDUSTRIAL DISTRICTS.

The districts designated for industry, I-1 and I-2, provide suitable space for existing industries and their expansion as well as for future industrial development. Performance standards, parking specifications and yard regulations are set forth in this chapter in order to insure safe industrial development that is compatible with adjacent uses. The locations of the districts are near railroads or highways in order to meet the transportation needs of industry. The light industrial district, provides space for industries which do not cause conditions that would be objectionable to neighboring properties. I-2, the heavy industrial districts, provides space for certain intensive industrial operations which may have some objectionable characteristics. Greater separation is required between the industries in the I-2 district and the residential or business uses than is necessary in the I-1 district. ('66 Code, § 3-1-2-8) (Ord. 1172, passed 10-3-66)

§ 153.28 PERMITTED USES AND SPECIAL EXCEPTIONS.

(A) The permitted uses for each district are shown below. The uses that are listed for the various districts shall be according to the common meaning of the term or according to definitions given in § 153.02. Uses not specifically listed or defined to be included in the categories under this section shall not be permitted.

(B) The special exceptions for each district that may be permitted by the Board of Zoning Appeals are shown below. The Board of Zoning Appeals shall follow the provisions of § 153.71 and any other applicable sections when considering any application for a special exception.

(1) *C-1 Conservation District.*

(a) *Permitted uses.*

1. Agriculture;
2. Public parks;
3. Public playgrounds;
4. Game reserves;
5. Essential services; and
6. Accessory uses.

(b) *Special exceptions.*

1. Single-family dwellings;

2. Riding stables;
3. Churches;
4. Swimming pools;
5. Cemeteries;
6. Golf courses;
7. Water and sewage treatment plants; and
8. Commercial recreation.

(2) *A-1 Agriculture Low Density Residential District.*

(a) *Permitted uses.*

1. Agriculture;
2. Single-family dwellings;
3. Public schools;
4. Parochial schools;
5. Public parks;
6. Public playgrounds;
7. Churches;
8. Essential services; and
9. Accessory uses.

(b) *Special exceptions.*

1. Commercial recreation;
2. Nursery schools;
3. Hospitals and clinics;
4. Public utility buildings;

5. Swimming pools;
6. Fire stations;
7. Municipal buildings and libraries;
8. Planned unit residential projects;
9. Cemeteries;
10. Rest homes;
11. Mobile homes;
12. Mobile home parks;
13. Golf courses;
14. Parking lots;
15. Private clubs;
16. Home occupations;
17. Greenhouses; and
18. Water and sewage treatment plants.

(3) *R-1 Medium Density Residential District.*

(a) *Permitted uses.*

1. Single-family dwellings;
2. Public and parochial schools;
3. Public parks and playgrounds;
4. Churches;
5. Essential services; and
6. Accessory uses.

(b) *Special exceptions.*

1. Nursery schools;
2. Hospitals and clinics;
3. Public utility buildings;
4. Swimming pools;
5. Fire stations;
6. Municipal buildings and libraries;
7. Planned unit residential projects;
8. Private clubs;
9. Parking lots;
10. Home occupations;
11. Cemeteries;
12. Water and sewage treatment plants; and
13. Nursing homes.

(4) *R-2 Medium-High Density Residential District.*

(a) *Permitted uses.*

1. Single-family dwellings;
2. Two-family dwellings;
3. Public and parochial schools;
4. Churches;
5. Public parks and playgrounds;
6. Essential services; and

7. Accessory uses.

(b) *Special exceptions.*

1. Multiple-family dwellings;
2. Nursery schools;
3. Hospitals and clinics;
4. Public utility buildings;
5. Swimming pools;
6. Fire stations;
7. Planned unit residential projects;
8. Municipal buildings and libraries;
9. Nursing homes;
10. Private clubs;
11. Parking lots;
12. Home occupations;
13. Funeral homes;
14. Cemeteries;
15. Water and sewage treatment plants;
16. Boarding house; and

17. Grazing for horses, donkeys, ponies, or mules (collectively, for the purpose of this special exception only, “grazing animals”). This special exception may only be granted in the event that petitioner owns no less than five contiguous acres that are being sought to be placed under this classification. Also, this special exception can only be granted under the condition that no more than five grazing animals are kept or sheltered on the property in question. A grazing animal kept under this special exception, shall not be considered livestock or an exotic animal as defined by § 91.08, nor should

owners of grazing animals granted this special exception be found to be in violation of City of Elwood § 91.08, for as long as the grazing animal remains at the property for which the special exception is granted.

(5) *R-3 High Density Residential District.*

(a) *Permitted uses.*

1. Single-family dwellings;
2. Two-family dwellings;
3. Multiple-family dwellings;

4. Public and parochial schools;
5. Churches;
6. Public parks and playgrounds;
7. Parking lots;
8. Essential services; and
9. Accessory uses.

(b) *Special exceptions.*

1. Nursery schools;
2. Hospitals and clinics;
3. Public utility buildings;
4. Water and sewage treatment plants;
5. Swimming pools;
6. Fire stations;
7. Planned unit residential projects;
8. Municipal buildings and libraries;
9. Private clubs;
10. Home occupations;
11. Funeral homes;
12. Mobile homes;
13. Mobile home parks;
14. Cemeteries; and
15. Nursing homes.

(6) *B-1 Limited Business District.*

(a) *Permitted uses.*

1. Retail business, no auto service;
2. Eating and drinking establishments, no drive-ins;
3. Offices and banks;
4. Personal and professional services;
5. Fire stations and municipal buildings;
6. Public parks and playgrounds;
7. Parking lots;
8. Essential services;
9. Accessory uses;
10. Churches;
11. Single-family dwellings;
12. Two-family dwellings;
13. Multiple-family dwellings; and
14. Funeral homes.

(b) *Special exceptions.*

1. Planned unit business projects;
2. Wholesale business;
3. Hotels and motels;
4. Commercial schools;
5. Commercial recreation;
6. Public utility buildings;

7. Printing shops;
8. Veterinary hospitals;
9. Schools, public and parochial;
10. Cleaning and laundry;
11. Private clubs; and
12. Hospitals and clinics.

(7) *B-2 Central Business District.*

(a) *Permitted uses.*

1. Retail business, no auto service;
2. Eating and drinking establishments, no drive-ins;
3. Offices and banks;
4. Personal and professional services;
5. Fire stations and municipal buildings;
6. Public parks and playgrounds;
7. Parking lots;
8. Hospitals and clinics;
9. Essential services; and
10. Accessory uses.

(b) *Special exceptions.*

1. Planned unit business projects;
2. Single-family dwellings;
3. Multiple-family dwellings;

4. Automobile sales, service and repair;
5. Hotels and motels;
6. Commercial recreation;
7. Public utility buildings;
8. Churches;
9. Schools, public and parochial;
10. Private clubs;
11. Drive-in restaurants;
12. Wholesale business;
13. Commercial schools;
14. Funeral homes;
15. Veterinary hospitals;
16. Printing shops;
17. Cleaning and laundry plants; and
18. Theaters.

(8) *B-3 General Business District.*

(a) *Permitted uses.*

1. Retail business;
2. Eating and drinking establishments;
3. Offices and banks;
4. Personal and professional services;
5. Fire stations and municipal buildings;
6. Public utility buildings;

7. Parking lots;
8. Public parks and playgrounds;
9. Accessory uses;
10. Essential services;
11. Automobile sales, service and repair;
12. Motels and hotels;
13. Cleaning and laundry plants;
14. Private clubs;
15. Drive-in restaurants; and
16. Veterinary hospitals.

(b) *Special exceptions.*

1. Theaters;
2. Supply yards;
3. Commercial recreation;
4. Planned unit business;
5. Dairies;
6. Single-family dwellings;
7. Multiple-family dwellings;
8. Wholesale businesses;
9. Printing shops;
10. Warehouses;
11. Commercial schools;
12. Churches;

13. Schools, public and parochial;
14. Hospitals and clinics;
15. Funeral homes;
16. Farm implement sales, service and repair;
17. Mobile home parks;
18. Public transportation terminals; and
19. Mobile home sales.

(9) *I-1 Light Industrial District.*

(a) *Permitted uses.*

1. Research and testing laboratories;
2. Offices;
3. Warehouses;
4. Parking lots;
5. Light manufacturing;
6. Essential services;
7. Accessory uses;
8. Wholesale businesses; and
9. Public utility buildings.

(b) *Special exceptions.*

1. Motels;
2. Planned unit industrial projects;
3. Restaurants;
4. Truck and railroad terminals;

5. Supply yards;
6. Agriculture;
7. Fire stations and municipal buildings;
8. Water and sewage treatment plants;
9. Airports; and
10. Retail businesses.

(10) *I-2 Heavy Industrial District.*

(a) *Permitted uses.*

1. Agriculture;
2. Research and testing laboratories;
3. Offices;
4. Warehouses;
5. Parking lots;
6. General manufacturing;
7. Essential services;
8. Accessory uses;
9. Wholesale businesses;
10. Grain elevators;
11. Supply yards;
12. Truck and railroad terminals; and
13. Public utility buildings.

(b) *Special exceptions.*

1. Planned unit industrial projects;

2. Restaurants;
3. Stockyards and slaughterhouses;
4. Fire stations and municipal buildings;
5. Water and sewage treatment plants;
6. Airports;
7. Mineral excavation;
8. Junkyards;
9. Bulk fuel storage;
10. Concrete mixing;
11. Manufacture and processing of explosive materials; and
12. Retail business.

('66 Code, §§ 3-1-2-9 and 3-1-2-10) (Ord. 1172, passed 10-3-66; Am. Ord. 2165-B, passed 3-4-13; Am. Ord. 2270, passed 3-6-17)

§ 153.29 YARD AND LOT REQUIREMENTS.

(A) The minimum lot area, minimum width of lot, minimum depth of front yard, minimum width of each side yard and minimum depth of rear yard for each district shall be as shown on the table on the following page.

<i>District</i>	<i>Minimum Requirements</i>					
	<i>Lot Area</i>	<i>Lot Area Per Family</i>	<i>Lot Width</i>	<i>Front Yard Depth</i>	<i>Side Yard Width**</i>	<i>Rear Yard Depth*</i>
	Square feet	Square feet	Feet	Feet	Feet	Feet
C-1	80,000	80,000	200	40	20	20
A-1	20,000	20,000	100	35	15	20
R-1	9,500**	9,500	75	35	10	20
R-2	7,200**	3,600	60	30	8	10
R-3	6,000**	2,000	50	20	8	10
B-1	7,200**	3,500	60	30	8	10
B-2	3,000**	3,500	30	0	0	10
B-3	10,000**	3,500	100	30	10	10
I-1	20,000	N/A	100	30	20	20
I-2	80,000	N/A	200	40	20	20

Notes to table

* - Principal structures

** - The minimum lot area shall be 20,000 square feet if the lot is not served by a community sanitary sewer system approved by the State Board of Health.

N/A - Not applicable

(B) Lots which abut on more than one thoroughfare shall provide the required front yards along every thoroughfare, except alleys.

(C) No portion of a principal structure, whether open or enclosed including garages, porches, carports, balconies, roofs or platforms have normal grade level, shall project into any minimum front, side or rear yard. Accessory structures may not be located closer than five feet to the rear and side property lines.

(D) In any residential district where at least 25% of the lots in a block are occupied by existing residential structures, the minimum depth of a front yard may be the average of the depths of the front yards of the existing residential structures.

(‘66 Code, § 3-1-2-11) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 153.30 HEIGHT REGULATIONS.

No principal structure shall exceed 35 feet in height above the average ground level and no accessory structure shall exceed 16 feet in height above ground level unless approved by the Board of Zoning Appeals. In any district, the Board may authorize a variance to this height regulation if:

(A) All front and side yard depths are increased one foot for each additional foot of height; or

(B) The structure is any of the following and does not constitute a hazard to an established airport, television and radio towers, church spires, belfries, monuments, tanks, water and fire towers, stage towers and scenery lofts, silos, cooling towers, ornamental towers and spires, chimneys, elevator bulkheads, smoke-stacks, conveyors and flagpoles.

('66 Code, § 3-1-2-12) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

GENERAL REGULATIONS**§ 153.45 NONCONFORMING USES.**

The following provisions shall apply to all nonconforming uses.

(A) A nonconforming use may be continued but may not be extended, expanded or changed unless to a conforming use, except as permitted by the Board of Zoning Appeals in accordance with the provisions of this chapter.

(B) Any nonconforming structure damaged by fire, flood, explosion or other casualty may be reconstructed and used as before if reconstruction is performed within 12 months of the casualty and if the restored structure has no greater coverage and contains no greater cubic content than before the casualty.

(C) In the event that any nonconforming use, conducted in a structure or otherwise ceases for whatever reason, for a period of one year or is a domed for any period the nonconforming use shall not be resumed except with the approval of the Board of Zoning Appeals.

(D) In the event that the ownership of any of any nonconforming use changes, it shall terminate the use.

('66 Code, § 3-1-3-1) (Ord. 1172, passed 10-3-66; Am. Ord. 1376, passed 6-4-96)

§ 153.46 ACCESSORY USES.

Accessory uses and structures such as private garages, tool sheds, fences, retaining walls and landscaping are permitted in all districts in conjunction with a primary use or structure provided the

accessory use does not change the character of the district in which it is located. A private swimming pool may be permitted as an accessory use if it is surrounded by a wall or fence so as to prevent uncontrolled access by children.

(‘66 Code, § 3-1-3-2) (Ord. 1172, passed 10-3-66)

§ 153.47 OFF-STREET PARKING.

Off-street parking spaces shall be provided in accordance with the specifications in this section in all districts, except the B-2 District, whenever any new use is established or existing use is enlarged.

(A) Parking spaces may be located on a lot other than that containing the principal use with the approval of the Board of Zoning Appeals.

(B) Any off-street parking lot for more than five vehicles shall be graded for proper drainage and surfaced so as to provide a durable and dustless surface.

(C) Any lighting used to illuminate any off-street parking lot shall be so arranged as to reflect the light away from adjoining premises in any “R” district.

USE	PARKING SPACES REQUIRED
Residential	Two per dwelling unit
Church and school	One per six seats in principal assembly room
Hotels, motels and boarding houses	One for each living or sleeping unit
Private club or lodge	One per four members
College residence hall or fraternity	One per four occupants
Theater	One per four seats
Hospitals and rest homes on maximum working shift	One per three beds and one for each two employees
Professional offices, wholesale houses and medical clinics	One for every 250 square feet of floor space
Retail businesses, eating and drinking places and personal service establishments	One for every 100 square feet of floor space

USE	PARKING SPACES REQUIRED
Bowling alleys	Five for each alley
Recreational or assembly places; e.g. dance halls, night clubs, funeral homes	One for every 100 square feet of floor space
Industrial	One for each two employees on the maximum working shift
('66 Code, § 3-1-3-3) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99	

§ 153.48 MOBILE HOME PARKS.

Mobile home parks, where permitted, shall be in accordance with the *Mobile Home Parks Act of 1955*, as amended, the *State Board of Health Regulations*, as amended, and the requirements of this section. (I. C. 13-1-7-1)

(A) The minimum area of a mobile home park shall be five acres.

(B) Each mobile home site within the mobile home park shall have a minimum area of 3,600 square feet.

(C) Not less than 10% of the gross area of the mobile home park shall be improved for recreational activities for the residents of the park.

(D) The mobile home park shall be appropriately landscaped and screened from adjacent properties.

(E) The mobile home park shall meet all applicable requirements of the Subdivision Control Ordinance, as now or hereafter enacted.

(F) Coin-operated laundries, laundry and dry cleaning pick-up stations and other commercial convenience establishments may be permitted in mobile home parks provided:

(1) They are subordinate to the residential character of the park;

(2) They are located, designed and intended to serve only the needs of the persons living in the park;

(3) The establishments and the parking areas related to their use shall not occupy more than 10% of the total area of the park; and

(4) The establishments shall present no visible evidence of their commercial nature to areas outside of the park.

(G) Each mobile home site shall be provided with a stand consisting of a solid concrete slab, two concrete ribbons or concrete pillars of a thickness and size adequate to support the maximum anticipated loads during all seasons. When concrete ribbons are used, the area between the ribbons or pillars shall be filled with a layer of crushed rock or stone.

('66 Code, § 3-1-3-4) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 153.49 MANUFACTURED HOMES.

(A) *Permitted placement.*

(1) All manufactured housing will be excluded from the following locations in the city:

(a) From the center of the first alley west of Anderson Street to the first alley east of Anderson Street from the center of Road 1300 North, also known as Fairground Road, to the city limits on the south; and

(b) From the first alley north of Main Street to the first alley south of Main Street from the city limits on the west to the city limits on the east; and

(c) All of the Northwood Estate Addition; and

(2) Single wide manufactured housing will be permitted in the following locations provided that it meets the requirements set forth in this section:

(a) From the Norfolk and Southern Railroad on the north to the city limits on the south and from the center of the Tipton Madison County Line on the west to the center of the South 9th Street on the east; and

(b) From the center line of the first alley north of South "L" Street to the centerline of South "P" Street and from the centerline of South 28th Street on the west to the centerline of South 29th Street on the east.

(c) All of the area encompassed by Holiday Manor Subdivision, Elwood, Indiana, which encompasses all of the lots abutting the streets of Independence Drive South, Independence Drive East, Memorial Drive East, Memorial Drive South, Washington Parkway, and Lincoln Circle.

(3) All multiple wide manufactured housing will be permitted in all areas of the city except where all manufactured units are excluded if they meet the requirement.

(B) *Requirements for a single wide unit.*

(1) A single wide unit:

(a) Shall not be more than five years old at time of placement;

(b) Shall have house-type siding;

(c) Shall have a hip roof;

(d) Shall be not less than 65 feet in length and 14 feet in width;

(e) Shall have length of unit parallel with street;

(f) Shall be owned by the permit holder, as well as the lot or lots on which the unit is set.
The permit holder shall live in the unit;

(g) Shall never be used as a rental unit;

(h) Shall have a manufactured housing seal;

(i) Shall have either a masonry perimeter foundation or skirting manufactured for manufactured housing;

(j) Shall be anchored per manufacturers specifications;

(k) Shall be hooked up to city water and sewage; and

(l) Shall have a special exception and building permit.

(2) The special exception granted in accordance with division (B)(1) of this section shall be transferable only if all of the following criteria are met:

(a) The unit must be presently situated in an area authorized for mobile homes;

(b) The unit must have been manufactured after 1976 and in accordance with federal standards;

(c) The unit must have at least 910 square feet of entire living area without including attached or enclosed rooms or structures;

(d) The unit must have a hip or gable roof;

(e) The unit must have horizontal siding;

(f) The length of the unit shall be parallel with the street except in those areas defined by division (A)(2)(c) of this section;

(g) The unit must have off street parking in accordance with § 153.47;

(h) The unit must be situated on a lot or lots that would allow for the correct setbacks as set forth in the zoning code;

(i) The unit must be owner occupied, cannot be rented, and cannot be used for storage;

(j) The unit must be anchored per manufacturer's specifications;

(k) The unit shall be hooked up to city water and sewer;

(l) The unit must have a masonry perimeter foundation or material manufactured for that purpose; and

(m) The unit must be visually compatible with the surrounding neighborhood as determined by the Board of Zoning Appeals.

(3) Any single wide unit set on any lot other than in designated areas prior to an amendment, shall be "grandfathered" on the same lot. Any changes, change of ownership, change of units, etc., whatsoever shall cause a single unit to lose their "grandfathered status."

(4) Any single wide mobile homes situated in Holiday Manor Subdivision as further identified in division (A)(2)(c) of this section are freely transferable without prior approval of the Board of Zoning Appeals.

(5) All single wide mobile homes situated within the corporate limits of the city must be owner occupied, except all single wide mobile homes not owner occupied within the area encompassed by Holiday Manor Subdivision (as set forth in division (A)(2)(c) of this section) and rented pursuant to a written lease which has as an effective date on or before December 1, 2003, shall be authorized and "grandfathered." However, any change in ownership of the mobile home, any change of the mobile home itself, or any change in use of the mobile home shall result in the immediate termination of the authorization and the grandfathered status.

(C) Requirements for multiple width units.

(1) A multiple width unit:

(a) Shall not be more than five years old at time of placement;

(b) Shall be not less than 24 feet in width and 40 feet in length;

- (c) Shall have not less than a 3/12 pitch roof;
- (d) Shall have siding and roofing compatible with the neighborhood;
- (e) Shall have a masonry perimeter foundation;
- (f) Shall be anchored per manufacturers specifications;
- (g) Shall have manufactured housing seal;
- (h) Shall be hooked up to city water and sewage; and
- (i) Shall have a building permit.

(D) *Violations.*

(1) If any property owner violates the provisions of this section, he or she shall be notified in writing of the violations. Notice of violation shall be a written notice and shall include a statement of the nature of the violation, the location of the offices of the Building Commissioner and Clerk-Treasurer, the identification of the violator and the identification of the issuing official.

(2) The Building Commissioner shall send a violation notice by certified mail to the property owner found to be in violation of the section and that person shall have a maximum of 15 days to complete and return a form letter indicating agreement to correct the violation within 30 days or appeal the violation.

(3) Upon receipt of a request for an appeal, the Building Commissioner shall notify the appellant in writing of the place and dates to schedule and appeal. The property owner may appeal the violation, the compliance requirements or the completion date.

(4) Upon presentation of convincing evidence, the Building Commissioner may negotiate an adjusted compliance schedule commensurate with the evidence presented and in keeping with the section. (Ord. 1632, passed 8-5-85; Am. Ord. 1632, passed 5-6-96; Am. Ord. 1998, passed 10-7-03) Penalty, see § 10.99

§ 153.50 PLANNED UNIT PROJECTS.

(A) The district regulations of this chapter may be modified by the Board of Zoning Appeals in the case of a plan utilizing an unusual concept of development which meets the requirements of this section. The planned unit projects provision is intended to encourage original and imaginative development and subdivision design which preserves the natural amenities of the site and provides for the general welfare of the city. After the unit plan is approved, all development construction and use shall be in accordance

with that plan unless a new planned unit project plan is submitted to and approved by the Board of Zoning Appeals as required by this chapter.

(B) Any development contrary to the approved unit plan shall constitute a violation of this chapter.

(C) The area of land to be developed shall not be less than five acres.

(D) Properties adjacent to the unit plan shall not be adversely affected.

(E) In planned unit residential projects, the minimum lot and yard requirements may be reduced; however, the average density of dwelling units in the total unit plan shall not be higher than that permitted in the district in which the plan is located.

(F) The unit plan shall permanently reserve land suitable for the common use of the public or the owners in a particular development. This may be accomplished by dedication, covenant or easement. This may be for future public facilities, for recreational or scenic open space or for a landscaped buffer zone as approved by the Plan Commission. Provisions for permanent control and maintenance of this land shall be outlined in a form acceptable to the Plan Commission Board and City Attorney.

(G) This use of the land shall not differ substantially from the uses permitted in the district in which the plan is located, except that limited business facilities, intended to serve only the planned unit residential project area and fully integrated into the design of the project, may be considered and multiple-family dwellings may be considered in single-family residential districts if they are so designed and sited that they do not detract from the character of the neighborhood in which they occur.

(H) The unit plan shall be consistent with the purpose of this chapter.

(I) The unit plan shall be reviewed and recommendations made, by the Plan Commission to determine if the proposed project is consistent with the Comprehensive Plan in the best interests of the city.

('66 Code, § 3-1-3-5) (Ord. 1172, passed 10-3-66)

§ 153.51 TEMPORARY STRUCTURES.

(A) Temporary structures used in conjunction with construction work, seasonal sales or emergencies may be permitted by the Board of Zoning Appeals if the proposed site is acceptable and neighboring uses are not adversely affected. They shall be removed promptly when their function has been fulfilled. Permits for temporary structures may be issued for a period not to exceed six months. Residing in basement of foundation structures shall not be permitted.

(B) On site storage containers may be used only subject to the following restrictions:

- (1) Cannot have on your premises for more than six months;
 - (2) It cannot be situated on that part of the property that is between the plane of the front of the house and the front street; and
 - (3) Wherever the unit is temporarily situated, it cannot be situated so as to obstruct the vehicular view.
- ('66 Code, § 3-1-3-6) (Ord. 1172, passed 10-3-66; Am. Ord. 2194, passed 5-5-14) Penalty, see § 10.99

§ 153.52 SIGNS.

No sign, billboard or exterior graphic display shall be permitted in any district except as herein provided.

(A) In any district a sign not exceeding two square feet in surface size is permitted which announces the name, address and professional activity of the occupant of the premises on which the sign is located.

(B) A bulletin board not exceeding 24 square feet is permitted in connection with any church, school or similar public building.

(C) Temporary signs.

(1) *Real estate availability signs.* Signs may be erected advertising the sale, lease, or rental of property:

(a) For properties under five acres, the sign must be set back at least five feet from the edge of the right-of-way, no more than six square feet in area and no more than four feet in height.

(b) For properties over five acres, the sign must be set back at least ten feet from the edge of the right-of-way, no more than 32 square feet in area and no more than eight feet in height.

(2) *Construction signs.* Only one sign can be erected indicating the architect, engineer, project name, source of financing, contractor, and subdivision information, not to exceed 64 square feet, and displayed during the construction period on a construction site.

(3) *Event signs.* Signs may be erected by community, social, religious, and fraternal organizations for a fund raising or community events. Such signs shall not exceed 32 square feet and must be removed within five days of the event.

(4) *Political signs.* Political signs must be removed within ten days after the election date. The total surface area of such signs shall not exceed nine square feet and no side may exceed 48 inches in length, and the sign may not exceed 40 inches in height.

(5) *Garage sale signs.* Signs informing the public of private garage sales shall not be larger than four square feet or more than 40 inches tall and shall be removed within 48 hours after the sale.

(6) *Obstructing traffic and line of sight.* No temporary signs otherwise allowed herein shall be erected or placed so as to obscure vehicular traffic or obstruct the line of sight of vehicular traffic.

(7) *Attachment to city-owned lighting prohibited.* No temporary signs, otherwise allowed herein shall be attached to any city-owned lamp post or street light.

(D) Business signs shall be permitted in connection with any legal business or industry when located on the same premises, and if they meet the following requirements:

(1) Signs shall not contain information or advertising for any product not sold or produced on the premises.

(2) Signs shall not have an aggregate surface size larger than five square feet for each foot of width of the principal structure on the premises.

(3) Signs shall not project more than two feet over public rights-of-way.

(4) Signs shall not be illuminated in any manner which causes undue distraction, confusion or hazard to vehicular traffic.

('66 Code, § 3-1-3-7) (Ord. 1172, passed 10-3-66; Am. Ord. 1991, passed 7-16-03; Am. Ord. 1991, passed 10-4-04) Penalty, see § 10.99

§ 153.53 HOME OCCUPATION.

A home occupation may be permitted by the Board of Zoning Appeals as a special exception if it complies with the requirements of this section.

(A) The home occupation shall be carried on by a member of the family residing in the dwelling unit with not more than one employee who is not part of the family.

(B) The home occupation shall be carried on wholly within the principal or accessory structures.

(C) Exterior display or signs other than those permitted under § 153.52 (A), exterior storage of materials and exterior indication of the home occupation of variation from the residential character of the principal structure shall not be permitted.

(D) Objectionable noise, vibration, smoke, dust, electrical disturbance, odors, heat or glare shall not be produced.

(E) The home occupation shall not create any traffic or parking problems.
(‘66 Code, § 3-1-3-8) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 153.54 OFF-STREET LOADING.

Every building which requires the receipt or distributing by vehicles of material or merchandise shall provide off-street loading berths of a size and arrangement appropriate for the types of vehicles utilizing this space. In no case will loading or unloading be permitted within public rights-of-way.
(‘66 Code, § 3-1-3-9) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

§ 153.55 PERFORMANCE STANDARDS.

All uses established or placed into operation after February 1, 1975, shall comply with the following performance standards in the interests of protecting the public health, safety and welfare, and lessen injury to property. No use in existence on the effective date of the chapter shall be so altered or modified to conflict with these standards.

(A) *Fire protection.* Fire fighting equipment and prevention measures acceptable to the Elwood Fire Department shall be readily available and apparent when any activity involving the handling or storage of flammable or explosive materials is conducted.

(B) *Electrical disturbance.* No use shall cause electrical disturbance adversely affecting radio, television or other equipment in the vicinity.

(C) *Noise.* No use shall produce noise in such a manner as to be objectionable because of volume, frequency intermittence, beat shrillness or vibration. The noise shall be muffled or otherwise controlled so as not to become detrimental, provided, however, public-safety sirens and related apparatus used solely for public purposes shall be exempted from this standard.

(D) *Vibration.* No use shall cause vibrations or concussions detectable beyond the lot lines without the aid of instruments.

(E) *Odor.* No use shall emit across the lot lines malodorous gas or matter in a quantity as to be readily detectable at any point along the lot lines.

(F) *Air pollution.* No use shall discharge across the lot lines fly ash, dust, smoke, vapors, noxious, toxic or corrosive matter or other air pollutants in a concentration as to be detrimental to health, animals, vegetation or property.

(G) *Heat and glare.* No use shall produce heat or glare in a manner as to create a hazard perceptible from any point beyond the lot lines.

(H) *Water pollution.* No use shall produce erosion or other pollutants in a quantity as to be detrimental to adjacent properties and conflict with water pollution standards established by public agencies.

(I) *Waste matter.* No use shall accumulate within the lot or discharge beyond the lot lines any waste matter, whether liquid or solid, in violation of applicable public health, safety and welfare standards and regulations.

('66 Code, § 3-1-3-11) (Ord. 1172, passed 10-3-66) Penalty, see § 10.99

ADMINISTRATION

§ 153.70 PLAN COMMISSION; DUTIES AND MEMBERSHIP.

(A) The Plan Commission shall establish the procedures and responsibilities for the administration and enforcement of this chapter in accordance with the following provision and state legislation. ('66 Code, § 3-1-4-1)

(B) Any member of the Plan Commission or of the Board of Zoning Appeals who misses three consecutive meetings shall be treated as if he resigned upon application by the Commission or the Board to the appropriate appointing authority. ('66 Code, § 3-1-4-6)
(Ord. 1510, passed - -)

§ 153.71 BOARD OF ZONING APPEALS; POWERS AND DUTIES.

(A) In accordance with the state law, the Mayor shall appoint a Board of Zoning Appeals, which Board may adopt rules to govern its procedure. The Board of Zoning Appeals shall hold meetings, keep minutes and pursuant to notice, shall conduct hearings, compel the attendance of witnesses, take testimony and render decisions in writing, all as required by law. When permitting any appeal, variance, special exception or change of a nonconforming use, the Board may impose conditions and requirements as it deems necessary for the protection of adjacent property and public interest. ('66 Code, § 3-1-5-1)

(B) The Board shall have the power to hear and decide appeals from any order, requirement, decision, grant or refusal made in the administration of this chapter. ('66 Code, § 3-1-5-2)

(C) The Board of Zoning Appeals, upon appeal, shall have the power to authorize variances from the requirements of this chapter, and to attach such conditions to the variances as it deems necessary to assure compliance with the purpose of this chapter. A variance may be permitted if all the following requirements are met:

(1) Literal enforcement of the chapter would result in an unnecessary hardship with respect to the property;

(2) Unnecessary hardship results because of unique characteristics of the property;

(3) The variance would not change the land use of the property or the character of the neighborhood; and

(4) The variance observes the spirit of this chapter, produces substantial justice and is not contrary to the public interest.
(‘66 Code, § 3-1-5-3)

(D) The Board of Zoning Appeals shall have the power to authorize special exceptions if the following requirements are met;

(1) The special exception shall be listed as such in § 153.28 of this chapter for the district requested.

(2) The special exception shall not involve any element or cause any condition that may be dangerous, injurious or noxious to any other property or persons and shall comply with the performance standards of § 153.55.

(3) The special exception shall be sited, oriented and landscaped to produce a harmonious relationship of buildings and grounds to adjacent buildings and properties.

(4) The special exception shall produce a total visual impression and environment which is consistent with the environment of the neighborhood.

(5) The special exception shall organize vehicular access and parking to minimize traffic congestion in the neighborhood.

(6) The special exception shall preserve the purpose of this chapter.
(‘66 Code, § 3-1-5-4)

(E) The Board shall have the power to authorize changes of lawful nonconforming uses as follows:

(1) A nonconforming use which occupies a portion of a structure or premises may be extended within the structure or premises as they existed when the prohibitory provision took effect but not in violation of the area and yard requirements of the district in which the structures or premises are located. No change of a nonconforming use shall entail structural alterations or any additions other than those required by law for the purpose of safety and health.

(2) The Board may authorize a change of use of an existing lawful nonconforming use to another nonconforming use if the Board determines that a change to a conforming use is not feasible and if the proposed new nonconforming use is more compatible with the use of adjoining properties than the existing nonconforming use.

(3) The Board may impose the conditions as it deems necessary for the protection of adjacent property and the public interest.
(‘66 Code, § 3-1-5-5)
(Ord. 1172, passed 10-3-66)

§ 153.72 PERMITS; PROCEDURE AND REQUIREMENTS.

(A) No permit shall be issued unless the proposed structure or use of structure or land is in complete conformity with the provisions of this chapter or unless a written order is received from the Board of Zoning Appeals, the Plan Commission or a Court in accordance with this chapter and state legislation.

(B) An improvement location permit shall be obtained before any structure may be constructed or reconstructed, located or relocated or enlarged or structurally altered. If the permit is issued, then the applicant shall apply for an occupancy permit, which occupancy permit shall not be issued until the structure is complete and complies with the chapter is in evidence.

(C) An occupancy permit shall be obtained before any person may:

- (1) Occupy or use any vacant land;
- (2) Occupy or use any structure requiring an improvement location permit;
- (3) Change the use of a structure or land to a different use; or
- (4) Change the use of a nonconforming use.

(D) A temporary occupancy permit may be issued for a period not exceeding six months during alterations or partial occupancy of land on structures, provided that the temporary permit may include conditions and safeguards as necessary to protect the safety of the occupants and the public.

(E) No permit required for:

- (1) Routine maintenance;
- (2) Exterior siding applications;
- (3) Painting;
- (4) Window or door repair or replacement;
- (5) Roofing (shingle replacement only);
- (6) Play equipment;
- (7) Landscaping;
- (8) Remodeling of existing structures not exceeding \$500 or use of additional lot coverage;

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- (9) Portable sheds (no permanent foundation) less than 160 square feet;
- (10) Signs with a surface area less than four square feet;
- (11) Essential services as defined in § 153.02; or
- (12) Decks or patios less than 80 square feet.

(F) All applications for permits shall be accompanied by a plot plan which is drawn to scale and shown clearly and completely:

- (1) The location, dimensions and nature of the property;
- (2) The location and dimensions of any existing or proposed structures;
- (3) All adjoining thoroughfares and any existing or proposed access to these thoroughfares;
- (4) The existing and proposed use of all structures and land; and
- (5) Other information as may be necessary to determine conformance with this chapter.

(G) If the work described in any building permit has not begun within six months of the date of issuance thereof, the permit shall expire. Further work shall not proceed unless a new permit is obtained.

(H) If the work described in any permit has not been substantially completed within one year of the date of issuance thereof, the permit shall expire and a written cancellation notice shall be sent to the property owner. Further work shall not proceed unless a new permit is obtained.

(I) If any work described in a demolition permit has not begun within ten days of the date of issuance, the permit shall expire. If the work described in the demolition permit has not been completed within 60 days of the issuance thereof, the permit shall expire and written cancellation notice shall be sent to the property owner. Further work shall not proceed unless a new permit is obtained.

('66 Code, § 3-1-4-2) (Ord. 1510, passed - -; Am. Ord. 1549, passed 7-12-82; Am. Ord. 1910, passed 2-1-99; Am. Ord. 1979, passed 2-4-02; Am. Ord. 2063, passed 2-4-08)

§ 153.73 PERMIT FEES.

The following fees shall be charged for applications for permits, petitions or other zoning relief. No part of the fees shall be returnable to the applicant or petitioner.

- (A) Improvement location permits (new construction and remodeling):

(1) Single-family dwelling: \$75.00 plus \$.06 per square foot, plus inspection fees, plus certificate of occupancy/completion;

(2) Two-family dwelling: \$75.00 plus \$.06 per square foot, plus inspection fees, plus certificate of occupancy/completion per unit;

(3) Accessory structures: \$75.00 plus \$.04 per square foot, plus inspection fees, plus certificate of occupancy/completion;

(4) Multi-family dwelling: \$100.00 plus \$.06 per square foot, plus inspection fees, plus certificate of occupancy/completion per unit;

(5) Commercial or industrial: \$125.00 plus \$.06 per square foot, plus inspection fees, plus certificate of occupancy/completion per unit;

(6) Free standing signs (a permanent sign supported by one or more uprights or poles not attached to anything): \$75.00;

(7) Single-wide mobile home:

and (a) For non-permanent foundations: \$150.00 (includes electrical/occupancy inspections);

(b) For permanent foundations: \$180.00 (includes electrical/occupancy inspections).

(8) Modular homes: \$200.00 (includes foundation/electrical/completion inspections);

(9) Portable shed: \$60.00 (less than 160 square feet no permit required);

(10) Inspection fees:

(a) Footing: \$30.00;

(b) Foundation: \$30.00;

(c) Rough-in (framing/electrical/plumbing): \$30.00; and

(d) Final: \$30.00.

(11) Inspection fees in two-family, multi-family, and commercial, apply to each unit;

(12) Re-inspection due to failed inspection: \$30.00;

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(13) Any improvement location permit issued after construction has begun will include a \$100.00 fee for late application;

(14) Fence (lot line inspection): \$30.00;

(15) Demolition permit:

(a) Residential: \$70.00;

(b) Commercial: \$100.00, plus \$.02 per square foot.

(16) Water and sewer lateral: \$30.00.

(B) Certificate of occupancy (new construction): \$40.00;

(C) Certificate of completion: \$30.00;

(D) Petition to amend ordinance re-zoning: \$100.00;

(E) Petition to Board of Zoning Appeals: \$100.00;

(F) Temporary trailer permit: \$100.00 for six months;

(G) Renewal of temporary permit: \$50.00;

(H) Petition for plat approval the greater of \$150.00 or \$2.00 per lot;

(I) Swimming pools location permit: no assessment required for approval so as not to interfere with utilities, public rights-of-way, public safety and homeowner safety;

(J) Any person filing an application or petition pursuant to this section shall assume the cost of any required public notice; and

(K) Contractor registration fee is \$100.00 per year.

('66 Code, § 3-1-4-3) (Ord. 1510, passed - -; Am. Ord. 1549, passed 7-12-82; Am. Ord. 1910, passed 2-1-99; Am. Ord. 2063, passed 2-4-08)

§ 153.74 METHOD OF APPEAL.

Any person aggrieved or affected by any provision of this chapter or any decision of the Administrator may appeal to the Board of Zoning Appeals, as provided by the rules of the Board, by filing a notice of appeal specifying the grounds thereof. Every decision of the Board shall be subject to review by certiorari.

('66 Code, § 3-1-4-5) (Ord. 1172, passed 10-3-66)

§ 153.75 VIOLATIONS.

(A) It shall be unlawful to locate or relocate, erect, construct, enlarge or use any structure or land in violation of any provision of this chapter or of any rule or regulation enacted hereunder by the Board of Zoning Appeals.

(B) The Plan Commission, or any designated enforcement official, shall invoke any legal, equitable or special remedy for the enforcement of this chapter.

(C) The Board of Zoning Appeals or the Plan Commission may bring an action for injunction in the Circuit Court to restrain a person from violating this chapter or the Board or Commission may bring an action for mandatory injunction, directing a person to remove a structure erected in violation of this chapter.

(D) Any structure or use in violation of this chapter, or any rule or regulation made pursuant to this chapter, shall be deemed to be a common nuisance and the owner or possessor of the structure, land or premises shall be liable for maintaining a common nuisance.
(‘66 Code, § 3-1-4-4) (Ord. 1510, passed - -; Am. Ord. 1549, passed 7-12-82) Penalty, see § 10.99

§ 153.76 CONTRACTOR REGISTRATION REQUIRED.

Any person working on a structure or residence within the city limits will be required to register with the city regardless if building permits are needed or not. The Building Commissioner has the authority to stop all work until registration has been completed. If the working project requires a building permit, a certificate of liability insurance will be required.
(Ord. 2063, passed 2-4-08)

§ 153.77 CONTRACTOR REGISTRATION NOT REQUIRED.

No registration will be required if the property owner(s) is working on his or her own personal living residence.
(Ord. 2063, passed 2-4-08)

CHAPTER 154: HISTORIC BUILDINGS

Section

- 154.01 Purpose and definitions
- 154.02 Historic Preservation Commission establishment and organization
- 154.03 Powers and duties of the Commission
- 154.04 Historic Districts, Conservation Districts and guidelines
- 154.05 Interim protection
- 154.06 Certificates of appropriateness (COA)
- 154.07 Visual compatibility
- 154.08 Staff approvals of certificates of appropriateness
- 154.09 Appeal provisions
- 154.10 Maintenance
- 154.11 Relationship with zoning districts
- 154.12 Enforcement, penalties and judicial review
- 154.13 Applicability

§ 154.01 PURPOSE AND DEFINITIONS.

(A) *Purpose.*

(1) It is deemed essential by the city that qualities relating to its history and harmonious outward appearance of its structures be preserved in order to:

- (a) Promote the educational, cultural and general welfare of the citizens of Elwood;
- (b) Insure the harmonious and orderly growth and development of the municipality;
- (c) Maintain established residential neighborhoods in danger of having their distinctiveness destroyed;
- (d) Enhance property values and attract new residents;
- (e) Ensure the viability of the traditional uptown area; and
- (f) Enhance tourism within the city.

(2) This purpose is advanced through the restoration and preservation of historic areas and buildings, the construction of compatible new buildings where appropriate and the maintenance and insurance of compatibility in regards to style, form, proportion, texture and material between historic buildings and those of contemporary design. It is the intention of the city through this chapter to preserve and protect historic and architecturally worthy buildings, structures, sites, monuments, streetscapes and neighborhoods which impart a distinct aesthetic quality to the city and serve as visible reminders of its historic heritage.

(B) *Definitions.* The following terms shall have the following meaning unless a contrary meaning is required by the context or is specifically prescribed. Words in the present tense include the future tense. The singular includes the plural, and the plural, the singular. The word “shall” is always mandatory. The word “person” includes a firm, a partnership, limited liability company, unincorporated association or a corporation, as well as an individual. Terms not defined in this section shall have the meanings customarily assigned to them.

ADJACENT. Any real property adjoining the property in question. This shall also include properties directly or diagonally across a street, alley or public way.

ALTERATION. A material change in the external architectural features of any structure within an historic district.

CITY. The City of Elwood, Indiana.

CLASSIFICATIONS OF STRUCTURES OR BUILDINGS IN HISTORIC DISTRICTS.

(a) **CONTRIBUTING.** A **CONTRIBUTING** or **C** classification means the structure or building is at least 40 years old, but does not meet the criteria for an “O” or “N” classification. Such resources are important to the density or continuity of the area’s historic fabric. Contributing structures can be listed on the National Register only as part of an historic district.

(b) **NON-CONTRIBUTING.** A structure or building classified as **NON-CONTRIBUTING** or **NC** is property not described as one of the three above historic classifications. Such properties may be less than 40 years old, or they may be older structures that have been altered in such a way that they have lost their historic character, or they may be otherwise incompatible with their historic surroundings. These properties are not eligible for the listing on the National Register.

(c) **NOTABLE.** A classification of **NOTABLE** or **N** means that the structure or building does not merit the outstanding rating, but it is still above average in its importance. A notable structure may be eligible for the National Register.

(d) **OUTSTANDING.** The **OUTSTANDING** or **O** classification means that the structure or building has sufficient historic or architectural significance and is already listed, or is eligible for individual listing in the National Register of Historic Places.

COMMISSION. The Historic Preservation Commission established by this chapter.

CONSERVATION DISTRICT. A district established by ordinance in which the regulations are less stringent than in an Historic District.

DEMOLITION. The complete or substantial removal of any building or structure.

HISTORIC DISTRICT. A single building, structure, object or site or a concentration of buildings, structures, objects, spaces or sites designated by ordinance adopted pursuant to this chapter. Property not so designated will not be considered an Historic District within the terms of this title.

INTERESTED PARTY. Any one of the following:

- (a) The Mayor;
- (b) The Common Council;
- (c) The Elwood Plan Commission;
- (d) A neighborhood association, a majority of whose members are residents of an Historic District designated by an ordinance adopted under this chapter;
- (e) An owner or occupant of property located in an historic district established by an ordinance adopted under this chapter;
- (f) Historic Landmarks Foundation of Indiana, Inc., or any of its successors; and/or
- (g) The State Historic Preservation Officer designated under I.C. 14-3-3.4-10.

PRESERVATION GUIDELINES. Locally developed criteria which identify local design concerns in an effort to assist property owners in maintaining the character of the designated district or buildings during the process of rehabilitation or new construction.

ROUTINE MAINTENANCE. In-kind work (e.g. replacing shingles with identical shingles) or work which would not require a building permit, and any change that is not construction, removal or alteration and for which no certificate of appropriateness is required, and specifically including painting.

STREETSCAPE. The appearance from a public way, the distinguishing characteristics of which are created by the width of the street and sidewalks, their paving materials and color, the design of the street furniture (e.g. street lights, trash receptacles, benches and the like), the use of plant materials such as trees and shrubs, and the setback, mass and proportion of those buildings which enclose the street.

VISUAL COMPATIBILITY. Those elements of design that meet the guidelines set out in § 154.07.

(Ord. 2045, passed 1-8-07)

§ 154.02 HISTORIC PRESERVATION COMMISSION ESTABLISHMENT AND ORGANIZATION.

(A) *Creation.* Pursuant to I.C. 36-7-11-4, there is hereby established the Historic Preservation Commission of the city (hereinafter referred to as the “Commission”).

(B) *Composition.* The Commission shall consist of the City Planning Commission and its respective members. Any reference in this chapter to the Historic Preservation Commission shall refer to the City Planning Commission acting as the Historic Preservation Commission.

(C) *Commission Administrator.* The Elwood Planning Director will serve as the ex-officio Administrator of the Commission. The Administrator shall provide staff assistance to the Commission, act as the Commission’s Secretary and issue certificates of appropriateness as directed by the Commission.

(D) *Officers.* The Commission shall elect from its membership a Chairperson and Vice-Chairperson who shall each serve for one year and who may be reelected.

(E) *Rules.* The Commission shall utilize the same rules adopted by the Elwood Plan Commission for the transaction of its business.

(F) *Meetings.* Commission meetings must be open to the public in accordance with Indiana’s Open Door Law, and a public record shall be kept of the Commission’s resolutions, proceedings and actions. The Commission shall meet on an “as needed” basis with notification provided by the Plan Commission President. Special meetings may be called in a manner determined by the Plan Commission rules.
(Ord. 2045, passed 1-8-07)

§ 154.03 POWERS AND DUTIES OF THE COMMISSION.

(A) The Commission shall be concerned with those elements of development, redevelopment, rehabilitation and preservation that affect visual quality in an Historic District or Conservation District. Areas of concern may also include landscapes and streetscapes of historic importance. The Commission may not consider details of design, interior arrangements or building features, if those details, arrangements or features are not subject to public view.

(B) The Commission shall conduct a survey, or may adopt existing surveys, to identify historic buildings, structures and places located within the city. The Commission shall also issue a report to the

Common Council, based upon its survey, which designates each building or structure shown within an Historic or Conservation District, pursuant to the classifications shown within § 154.01. Final approval of an Historic District or Conservation District shall be by Common Council Ordinance.

(C) The Commission shall draw or have drawn and submit to the Plan Commission for its approval, a map or maps describing the boundaries of any Historic District or Conservation District, as defined within this chapter, it deems necessary for the city.

(D) The Commission or its designee shall approve or deny applications for certificates of appropriateness based upon Historic Preservation Guidelines adopted by the Plan Commission.

(E) The Commission will work with local history agencies to help promote public interest in historic preservation through public relations and community education programs.

(F) The Commission may recommend that the city or others:

(1) Acquire any real or personal property, including easements, that is appropriate for carrying out the purposes of the Commission; and

(2) Sell, lease, rent or otherwise dispose of real and personal property at a public or private sale.

(Ord. 2045, passed 1-8-07)

§ 154.04 HISTORIC DISTRICTS, CONSERVATION DISTRICTS AND GUIDELINES.

(A) *Initiation of District.* All recommendations for the establishment of an Historic District or Conservation District shall be in the form of a written report and must be based on the criteria outlined in this section. A recommendation for establishing an Historic District or Conservation District may be initiated from either of the following two sources.

(1) Based on its survey, the Commission may draw maps and reports for Common Council approval, as described above.

(2) Owners of property wishing to establish an Historic District or Conservation District which includes their property may petition the Commission to consider drawing and submitting a map or maps of the property to the Common Council for its approval. The Commission may establish in its rules criteria to be met before it considers a petition.

(B) *Commission preparation of maps.* In order to establish an Historic District or Conservation District, the Commission shall first prepare (or cause to be prepared) a map describing the District in accordance with the following:

Elwood - Land Usage

(1) The map shall be based on a survey conducted or adopted by the Commission which identifies historic buildings, structures and sites located within the city; and

(2) An Historic or Conservation District may be limited to the boundaries of a property containing a single building, structure or site, or may contain multiple contiguous buildings, structures or sites.

(C) *Classification of buildings.* The Commission shall classify and designate on the map all buildings, structures and sites within each Historic or Conservation District described on the map as follows:

- (1) Outstanding;
- (2) Notable;
- (3) Contributing; or
- (4) Non-Contributing/Non-Historic.

(D) *Notice and approval of owners.* Before Common Council may adopt any ordinance establishing an Historic District or a Conservation District, all owners of property within the proposed district must be notified by certified mail, return receipt requested, at least 30 days before any public hearing is held with respect to the ordinance. For purposes of this section, only owners of record in the office of the Madison County Auditor need be notified at their addresses of record according to the office. In addition, at least 50% of the parcel owners (based upon individual number of parcels and not size of parcels) in a proposed Historic District or Conservation District must agree to the designation of being in such a District, which agreement must be evidenced by a written petition signed by the owners prior to submission to Council. The petition may be one and the same as a petition filed by residents to establish an Historic District or Conservation District.

(E) *Designation of Conservation/Historic District.* Once established, a Conservation District or Historic District shall continue unless removed by ordinance.

(F) *Common Council approval of maps of Historic Districts and Conservation Districts.* Before an Historic District or Conservation District is established and the building classifications take effect, the map setting forth the district's boundaries and building classifications must be submitted to, and approved in an ordinance by the Common Council, which may be in the same ordinance creating the District.

(G) *Recording the fact of designation.* The boundaries of any Historic District or Conservation District shall be recorded in the office of the Madison County Recorder.

(H) *Additional regulations.* Each ordinance approved by Common Council establishing an Historic District or a Conservation District shall include any additional regulations or guidelines not contained in this chapter that will be applicable in the District to determine whether a certificate of appropriateness shall be issued. Each such ordinance shall be codified and placed in the City Code as recommended by the City Law Department.

(Ord. 2045, passed 1-8-07)

§ 154.05 INTERIM PROTECTION.

(A) When submitting a map to the Common Council under this chapter, the Commission may declare one or more buildings or structures that are classified and designated as historic on the map to be under interim protection.

(B) Not more than two working days after declaring a building, structure or site to be under interim protection under this section, the Commission shall, by personal delivery or certified mail, provide the owner and occupant of the building, structure or site with a written notice of the declaration. For purposes of this section, only owners of record in the office of the Madison County Assessor need be notified at their addresses of record according to the office. The written notice must:

- (1) Cite the authority of the Commission to put the building, structure or site under interim protection under this section;
- (2) Explain the effect of putting the building, structure or site under interim protection; and
- (3) Indicate that the interim protection is temporary.

(C) A building or structure put under interim protection under this section remains under interim protection until the map is approved or rejected in an ordinance by the Common Council of the city. If Common Council has not approved or rejected such an ordinance within 90 days after a building or structure is placed under interim protection, the Commission must reaffirm the interim protection status or it shall automatically cease. Interim protection may then continue up to an additional 90 days or until Common Council takes action on the ordinance as herein provided. Interim protection may only be reaffirmed one time, so that a building or structure may be under continuous interim protection for a maximum of 180 days. Once a building or structure ceases to be under interim protection, a one-year period must pass before it can again be placed under interim protection.

(D) While a building, structure or site is under interim protection under this section:

- (1) The building, structure or site may not be demolished or moved; and
- (2) The exterior appearance of the building, structure or site may not be conspicuously changed.

(E) The Commission may approve a certificate of appropriateness at any time during the interim protection, provided the proposed change meets the criteria for considering effect of actions on historic buildings in § 154.06(E) and any proposed preservation guidelines prepared for the building, structure or site.

(Ord. 2045, passed 1-8-07)

§ 154.06 CERTIFICATES OF APPROPRIATENESS (COA).

(A) *Certificates of appropriateness (COA) required.* A certificate of appropriateness must be issued by the Commission before a permit is issued for, or work is begun on, any of the following.

(1) *Historic Districts.*

(a) The demolition of any building or structure.

(b) The moving of any building or structure.

(c) A conspicuous change in the exterior appearance of any historic building (O, N or C structures) or any part of or appurtenance to such a building, including walls, fences, light fixtures, steps, paving and signs, by additions, reconstruction or alteration (excluding routine maintenance).

(d) Any new construction of a principal building, accessory building or structure subject to view from a public way.

(e) A change in walls and fences, or the construction of walls and fences along public ways.

(f) A conspicuous change in the exterior appearance on non-historic buildings (NC structures) subject to view from a public way by additions, reconstruction and/or alteration (excluding routine maintenance).

(2) *Conservation Districts.*

(a) The moving of any building.

(b) The demolition of any building.

(c) Any new construction of a principal building, accessory building or structure subject to view from a public way.

(B) *Application for certificates of appropriateness.* An application for a certificate of appropriateness shall be made in the office of the Planning Commission or its designee on forms provided by that office. All applications shall be subject to the rules and requirements established by the Commission.

(C) *Approval or denial of certificates of appropriateness.* The Commission or its designee shall approve or deny applications for certificates of appropriateness. If an application for a certificate of appropriateness is approved, or is not acted on within 30 days after it is filed, a certificate of appropriateness shall be issued. The Commission may grant an extension of the 30-day limit with prior written approval of the applicant. The Commission must report its findings and the reasons for its decision in written form, and supply the applicant with a copy of its report. A copy of the certificate of appropriateness must be submitted with the application for a building or demolition permit; no building or demolition permit shall be issued unless a copy of the certificate of appropriateness is provided by the applicant with the application. If a building or demolition permit is not obtained within one year after a certificate of appropriateness is approved, the certificate of appropriateness shall expire and the applicant must reapply before obtaining a building or demolition permit.

(D) *Re-applications.* If an application for a certificate of appropriateness is denied by the Commission, the applicant must wait at least one year before submitting a new application for the same work.

(E) *Criteria for considering effect of actions on historic buildings.* The Commission, in considering the appropriateness of any reconstruction, alteration, maintenance or moving of an historic building, structure, site or any part of or appurtenance to the building, structure or site, including walls, fences, light fixtures, steps, paving and signs, shall require that the work be done in a manner that will preserve the historical and architectural character of the building, structure or appurtenance. In considering historic and architectural character, the Commission shall consider, among other things, the following:

- (1) The purposes of this chapter;
- (2) The historical and architectural value and significance of the building, structure, site or appurtenance;
- (3) The compatibility and significance of additions, alterations, details, materials or other non-original elements which may be of a different style and construction date than the original;
- (4) The texture, material, style and detailing of the building, structure, site or appurtenance;
- (5) The continued preservation and protection of original or otherwise significant structure, material and ornamentation;
- (6) The relationship of buildings, structures, appurtenances or architectural features similar to one within the same historic district, including for primary areas, visual compatibility as defined in § 158.07(B); and

(7) The position of the building or structure in relation to the street, public right-of-way and to other buildings and structures.
(Ord. 2045, passed 1-8-07)

§ 154.07 VISUAL COMPATIBILITY.

(A) *Purpose.* The purpose of this section is to preserve and encourage the integrity of historic buildings, structures, sites, monuments, streetscapes and neighborhoods and to ensure their compatibility with any new work. The construction of a new building or structure, and the moving, reconstruction, alteration, major maintenance or repair conspicuously affecting the external appearance of any building, structure or appurtenance within the boundaries of the primary area of a structure within an Historic District must be generally of a design, form, proportion, mass, configuration, building material, texture and location on a lot compatible with other buildings in the Historic District and with places to which it is visually related.

(B) *Criteria for considering visual compatibility within Historic Districts.* Within an Historic District, new buildings and structures, as well as existing buildings, structures and appurtenances that are moved, reconstructed, materially altered or repaired, must be visually compatible with buildings and places to which they are visually related. The following compatibility factors should be considered when applicable.

(1) *Height.* The height of the proposed buildings shall be visually compatible with adjacent buildings.

(2) *Proportion of building's front facade.* The relationship of the width of a building to the height of the front elevation must be visually compatible with buildings, squares and places to which it is visually related.

(3) *Proportion of openings within the facility.* The relationship of the width of the windows to the height of windows in a building must be visually compatible with buildings, squares and places to which it is visually related.

(4) *Relationship of solids to voids in front facades.* The relationship of solids to voids in the front facade of a building must be visually compatible with buildings, squares and places to which it is visually related.

(5) *Rhythm of spacing of buildings on streets.* The relationship of a building to the open space between it and adjoining buildings must be visually compatible with buildings, squares and places to which it is visually related.

(6) *Rhythm of entrances and porch projections.* The relationship of entrances and porch projections of a building to sidewalks must be visually compatible with buildings, squares and places to which it is visually related.

(7) *Relationship of materials and texture.* The relationship of the materials and texture of the facade of a building must be visually compatible with buildings, squares and places to which it is visually related.

(8) *Roof shapes.* The roof shape of a building must be visually compatible with buildings, squares and places to which it is visually related.

(9) *Wall of continuity.* Appurtenances of a building or site, such as walls, wrought iron fences, evergreen landscape masses and building facades, must form cohesive walls of enclosure along the street, if necessary to ensure visual compatibility of the building to the buildings and places to which it is visually related.

(10) *Scale of the building.* The size of a building, and the building mass of a building in relation to open spaces, windows, door openings, porches and balconies shall be visually compatible with the buildings and places to which it is visually related.

(11) *Directional expression of front elevation.* A building shall be visually compatible with buildings, squares and places to which it is visually related in its directional character, including vertical character, horizontal character or non-directional character.
(Ord. 2045, passed 1-8-07)

§ 154.08 STAFF APPROVALS OF CERTIFICATES OF APPROPRIATENESS.

(A) Subject to the provisions of division (B) below, the Commission may authorize the staff of the Commission, on behalf of the Commission, to grant or deny an application for a certificate of appropriateness.

(B) The Commission must specify the types of applications for minor classifications of work that the staff of the Commission is authorized to grant or deny. The staff may not be authorized to grant or deny an application for a certificate of appropriateness for the following:

- (1) The demolition of a building, structure or site;
- (2) The moving of a building or structure;
- (3) The construction of an addition to a building or structure; or
- (4) The construction of a new building or structure.

(C) Any staff decision to deny a certificate of appropriateness may be appealed to the Commission by the property owner or other interested party by written notice to the Commission within 30 days after the staff decision.

(Ord. 2045, passed 1-8-07)

§ 154.09 APPEAL PROVISIONS.

(A) If the Commission denies the issuance of a certificate of appropriateness, the property owner may appeal the denial to Madison County Circuit or Superior Courts in accordance with I.C. 4-21.5-5.

(B) In addition to division (A) above, if the Commission denies the issuance of a certificate of appropriateness for the demolition of a building or structure, a request for reconsideration of a demolition permit may be made to the Commission in writing within six months after the initial denial and the Commission shall grant the certificate, but only after the following is established.

(1) The property owner must demonstrate to the Commission that an historic building or structure is incapable of earning an economic return on its value, as established by a licensed and qualified real estate appraiser.

(2) The property owner shall file with the Commission documented evidence that a good faith effort is being made to sell or otherwise dispose of the property at fair market value to any public or private person or agency which gives a reasonable assurance of its willingness to preserve and restore the property. The documented evidence shall be provided at the property owner's expense and shall include:

- (a) Offering price;
- (b) Date the offer of sale began;
- (c) Name and address of listing real estate agent, if any;
- (d) A copy of an advertisement which offers the property for sale; and
- (e) An appraisal of the property's fair market value by a licensed real estate appraiser.

(3) Notice of the proposed demolition must be given for a period of no less than 90 days nor more than one year from the date of proposed demolition, according to the rating of the building as follows:

- (a) "O" (Outstanding) - one year;
- (b) "N" (Notable) - nine months;
- (c) "C" (Contributing) - six months; and
- (d) "NC" (Noncontributing) - 90 days.

(4) Notice must be posted on the premises of the building or structure proposed for demolition in a location clearly visible from the street. In addition, notice must be published in the local newspaper one time not more than 60 days nor less than 30 days prior to expiration of the notice period established in division (B)(3) above.

(5) The Commission may approve a certificate of appropriateness at any time during the notice period under the above section, but shall be required to take action on the petition for reconsideration prior to the end of the notice period. If the certificate is approved, a demolition permit shall be issued without further delay and demolition may proceed.

(Ord. 2045, passed 1-8-07)

§ 154.10 MAINTENANCE.

(A) Historic buildings, structures and sites shall be maintained to meet the applicable requirements established under state statute and local code for buildings generally so as to prevent the loss of historic material and the deterioration of important character defining details and features.

(B) Nothing in this section shall be construed so as to prevent the ordinary repairs, maintenance and painting of any building, structure or site, provided that the repairs or maintenance do not result in a conspicuous change in the design, form, proportion, mass, configuration, building material, texture, location or external visual appearance of any structure, or part thereof.

(Ord. 2045, passed 1-8-07)

§ 154.11 RELATIONSHIP WITH ZONING DISTRICTS.

Zoning districts lying within the boundaries of an Historic District are subject to regulations for both the Zoning District and the Historic District. If there is a conflict between the requirements of the Zoning District and the requirements of the Historic District, the more restrictive requirements shall apply.

(Ord. 2045, passed 1-8-07)

§ 154.12 ENFORCEMENT, PENALTIES AND JUDICIAL REVIEW.

(A) Any person, whether as principal, agent, owner, lessee, tenant, contractor, builder, architect, engineer or otherwise, who violates any provision of this chapter shall be subject to a fine as follows, for each offense:

- (1) One hundred dollars for demolition; and
- (2) Fifty dollars for all other offenses.

(B) Each day of the existence of any violation of this chapter shall be a separate offense.

(C) The erection, construction, enlargement, alteration, repair, demolition, moving or maintenance of any building, structure or appurtenance which is begun, continued or maintained contrary to any provisions of this chapter is hereby declared to be a nuisance and in violation of this chapter and unlawful. The city may institute a suit for injunction in the Circuit or Superior Court of Madison County to restrain any person or entity from violating any provision of this chapter and to cause the violation to be prevented, abated or removed. The action may also be instituted by any property owner who is adversely affected by the violation of any provision of this chapter.

(D) The remedies provided for in this section shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.

(E) Any person or party aggrieved by a decision or action taken by the Commission shall be entitled to a judicial review hereof in accordance with I.C. 4-21.5-5.
(Ord. 2045, passed 1-8-07) Penalty, see § 10.99

§ 154.13 APPLICABILITY.

This chapter shall be immediately applicable to all property within any designated Historic or Conservation District for which the owner has signed the original petition requesting the district designation. It shall apply to all other property within a district upon the first transfer of ownership in the property by deed, contract or inheritance, after the adoption date of the ordinance establishing the applicable district, or 20 years from the date of adoption for the ordinance, whichever event shall first occur.

(Ord. 2045, passed 1-8-07)

CHAPTER 155: RENTAL REGISTRATION PROGRAM

Section

- 155.01 Registration program
- 155.02 Definitions
- 155.03 Rental Registration Fund

- 155.99 Penalty

§ 155.01 REGISTRATION PROGRAM.

(A) Beginning January 1, 2018, all owners or landlords of rental properties within the City must register with the city. There shall be a six month transition period to allow all landlords to be registered and pay all fees for the first year only. The due date will be June 1, 2018 for the first year and January 1 for all years following. The registration form shall include the following:

(1) The name, telephone number, and physical business address or domicile address of the owner. A secondary address may be used for a:

(a) A property manager authorized to manage the rental unit; and

(b) A person who is authorized to act as an agent for the owner for purpose of service of process and receiving and receipting for notices and demands.

(2) An affirmation that the rental units, the real property of which the rental units are a part, and any other rental unit property owned by the owner in the city, are not subject to any citation of violation of state and/or local codes and ordinances.

(3) A statement of the total number of rental units located on each separate parcel of real property covered by the registration.

(B) In the event of a change of ownership of a rental unit, the new owner or landlord must, not later than 30 days after the change of ownership, pay the registration fee and provide updated registration information.

(C) Registrations must be renewed annually.

(D) Owners or landlords will have 30 days to inform the city of any changes to registration information.

(E) (1) Owners or landlords shall register via a rental registration application obtained from the Building Commissioner's Office in City Hall.

(2) Indiana Code 36-1-20 *et seq.*, authorizes a political subdivision in the State of Indiana to establish registration programs for rental units within their jurisdiction subject to specific conditions and limitations.

(Ord. 2284, passed 7-10-17)

§ 155.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUILDING. Any residential structure, dwelling unit or accessory building in which is affixed to the land.

BUILDING COMMISSIONER. The Elwood Building Commissioner and the employees of the Building Commissioner's Office or Elwood Planning Department.

CITY. The City of Elwood.

DWELLING UNIT. A group of rooms or a room occupied or intended for occupancy as separate living quarters, and may encompass permanent provision for living, sleeping, eating, cooking, and sanitation.

LANDLORD. Any owner of a house or other building that has leased the building or dwelling unit to a tenant for living.

LEASE. Offering a building or dwelling unit for use or occupation for a definite period of time in exchange for remuneration, whether it be money, property, or any other form of payment.

MUNICIPAL CODE. The Code of Ordinances of the City of Elwood.

OWNER. Any person who, alone, jointly, or severally with others, shall have title to any buildings or dwellings shall have title to any building or dwelling unit with or without accompanying actual possession thereof.

PROPERTY MANAGER. A person, operator, firm, partnership, corporation, or other legal entity designated by the owner to manage a residential rental building including the authority to receive notices or citations that lives within the state of Indiana.

RENT or RENTAL. Offering a building or dwelling for use in exchange for remuneration that is automatically renewed periodically.

RENTAL UNIT COMMUNITY. One or more parcels of contiguous real property upon which are located one or more structures containing rental units if the total of all rental units is five or more.

TENANT. An occupant of a residential building or dwelling.
(Ord. 2284, passed 7-10-17)

§ 155.03 RENTAL REGISTRATION FUND.

Pursuant to I.C. 36-1-20-3, the funds generated from this program may not divert into the general fund and may be used solely for the purposes set forth in I.C. 36-1-20-3. A separate non reverting fund shall be created and designated as the Rental Registration Fund.
(Ord. 2284, passed 7-10-17)

§ 155.99 PENALTY.

(A) *Registration violations.*

(1) Failure to register as required is a violation subject to payment of a rental registry penalty for each rental unit or rental community in violation in the sum of \$250.

(2) Failure to update the registration within 30 days of a change in ownership as required is subject to admission of violation and payment of a penalty for each rental unit or rental community of \$150.

(3) Failure to renew the registration as of January 1 of each calendar year as required is a violation and subject to payment of a penalty for each rental unit or rental unit community in violation of \$150.

(4) Failure to pay any fees and registry fines may result in a lien being placed on the property for the amount owed.

(5) The penalties for failure to maintain an accurate registration for all rental units, pursuant to I.C. 36-1-20-6 after:

- (a) A notice of violation has been issued to the owner or owner's designee by First Class U.S. Mail.
- (b) Passage of 30 days, for the violation to be cured; and
- (c) Failure of the violation to be cured within the time stated in the notice; and
- (d) Enforcement shall be by the Building Commissioner or the Elwood Planning Commission.

(B) *Violations concerning the condition of dwellings.* With respect to violations concerning the condition of dwellings, including, without limitations, rentals and contract buyer and owner occupied units), penalties are as follows:

(1) *Penalties for violation of §§ 155.01 et seq.* Any person, firm or corporation who shall violate a provision of this Chapter 155 (excluding provisions relating to weeds and grass):

(a) Shall be cited into the Elwood City Court or another Court of proper jurisdiction within Madison County, Indiana.

(b) Upon conviction of a violation, the owner shall be subject to a fine as follows:

1. For a first offense, the fine shall be not less than \$100 nor more than \$250.
2. For a second offense occurring on the same property, and within 12 months of a first offense, the fine shall be \$500, plus court costs.
3. For the third offense occurring on the same property, and within 12 months of the second offense of the same offense, the fine shall be \$1,000, plus court costs.
4. For offenses fourth or more occurring on the same property for the same offense, and within 12 months of the third offense, the fine shall be \$2,500, plus court costs.

(2) A separate offense shall be deemed committed upon each day during which a violation occurs or continues.

(3) Citation for nuisance violations relating to weeds and grass shall be filed before the Elwood Planning Commission
(Ord. 2284, passed 7-10-17)

Statutory reference:

Power to prescribe fines up to \$2,500.00 granted, see I.C. 36-1-3-8 (a)(10)

CHAPTER 156: ABANDONED STRUCTURE MONITORING PROGRAM

Section

- 156.01 Registration program
- 156.02 Definitions
- 156.03 Abandoned Structure Registration Fund
- 156.04 Abandoned structure monitoring fee

§ 156.01 REGISTRATION PROGRAM.

(A) Beginning January 1, 2018, all owners or landlords of abandoned properties within the city must register with the city. There shall be a six month transition period to allow all landlords to be registered and pay all fees for the first year only. The due date will be June 1, 2018 for the first year and January 1 for all years following. The registration form shall include the following:

(1) The name, telephone number, and physical business of domicile address of the owner. A secondary address may be used for a:

(a) A property manager authorized to manage the abandoned property; and

(b) A person who is authorized to act as an agent for the owner for purpose of service of process and receiving and receipting for notices and demands.

(2) An affirmation that an abandoned building, the real property of which the building is a part, and any other property owned by the owner in the city, are not subject to any citation of violation of state and local codes and ordinances.

(3) A statement of the number of abandoned properties on each separate parcel of real property covered by the registration.

(B) Beginning on January 1, 2018, an owner of an abandoned property must pay to the city an initial registration fee of \$5. Only one registration fee is required for all abandoned properties in a community. A separate registration fee must be paid for each separate parcel of property on which an abandoned building is located.

(C) In the event of a change of ownership, the new owner must, not later than 30 days after the change of ownership, pay the registration fee and provide updated registration information.

(D) Landlords will have 30 days to inform the city of any changes to registration information.

(E) Landlords shall register via an abandoned registration form obtained from the Building Commissioner's Office in City Hall.
(Ord. 2286, passed 8-7-17))

§ 156.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUILDING. Any commercial, residential or industrial structure which is affixed to real estate within the city.

BUILDING COMMISSIONER. The Elwood Building Commissioner and the employees of the Building Commissioner's Office.

CITY. The City of Elwood.

COMMERCIAL STRUCTURE. Any building occupied or intended for occupancy for any commercial enterprise, including the sale of merchandise and the providing of services.

INDUSTRIAL STRUCTURE. Any building occupied or intended for occupancy for the production of goods or materials for wholesale or retail sale.

MUNICIPAL CODE. The Code of Ordinances of the City of Elwood.

OWNER. Any person who, alone, jointly, or severally with others, shall have title to any buildings or dwellings shall have title to any building or dwelling unit with or without accompanying actual possession thereof.

PROPERTY MANAGER. A person, operator, firm, partnership, corporation, or other legal entity designated by the owner to manage a residential rental building including the authority to receive notices or citations that lives within the state of Indiana.

RESIDENTIAL STRUCTURE. Any dwelling unit occupied or intended for occupancy as separate living quarters, and may encompass permanent provision for living, sleeping, eating, cooking, and sanitation.
(Ord. 2286, passed 8-7-17)

§ 156.03 ABANDONED STRUCTURE REGISTRATION FUND.

Pursuant to I.C. 36-1-20-3, the funds generated from this program may not divert into the General Fund and may be used solely for the purposes set forth in I.C. 36-1-20-3. A separate non-reverting fund shall be created and designated as the Rental Registration Fund.

(Ord. 2286, passed 8-7-17)

§ 156.04 ABANDONED STRUCTURE MONITORING FEE.

(A) (1) All these abandoned properties will be monitored through the office of Building Commissioner. Owners of abandoned properties shall pay an annual monitoring fee based on the following schedule:

1st year fee	\$500
2nd year fee	\$1,500
3 to 5 year fee	\$3,500
5 to 9 year fee	\$10,000

(2) There will be an additional \$500 fee per year of abandoned property that has been vacant for more than nine years.

(B) For the first year of any vacancy, the Board of Works and Public Safety may grant a waiver of the monitoring fee if there are plans to remove the abandoned property or to renovate it for occupancy.

(C) (1) Statement for monitoring fees will be mailed to owners on November 15, and payment of monitoring fees will be due January 5 of the following year.

(2) The goal of the Abandoned Structure Monitoring Program is to get properties occupied and to preserve and strengthen neighborhoods, not to collect fees from derelict property owners.

(Ord. 2286, passed 8-7-17)

