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**TITLE I: GENERAL PROVISIONS**

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**CHAPTER 10: GENERAL PROVISIONS**

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**§ 10.01 TITLE OF CODE.**

All ordinances of a permanent and general nature of the town, as revised, codified, rearranged, renumbered, and consolidated into component codes, titles, chapters, and sections, shall be known and designated as the “Town Code,” for which designation “Code of Ordinances,” “Codified Ordinances” or “Code” may be substituted. Code title, chapter, and section headings do not constitute any part of the law as contained in the code.

**§ 10.02 JURISDICTION.**

Unless otherwise provided in this code, this code shall apply to all acts performed within the corporate limits of the town. Provisions of this code shall also apply to acts performed outside the corporate limits of the town and up to the limits provided by law, where the law confers power on the town to regulate such particular acts outside the corporate limits.

**§ 10.03 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.

#### **§ 10.04 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.

#### **§ 10.05 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existing law or amendment thereto reenacted by this code shall continue in operation and effect, as if it had not been repealed by this code. All rules and regulations adopted under laws reenacted in this code shall remain in full force and effect unless repealed or amended subsequent to the enactment of this code.

(B) Any appropriation repealed and reenacted by this code is continued only for the period designated in the original enactment of that appropriation.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(D) Any irreconcilable conflict between sections shall be resolved by reference to the dates that the sections were originally enacted.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) (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.

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

## § 10.06 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.

(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.

**CLERK/TREASURER.** The Clerk/Treasurer of the Town Council.

**COUNCIL.** The Town Council.

**COUNTY.** The county or counties in which the town is located.

**HIGHWAY.** Includes bridges, roads, and streets, unless otherwise expressly provided.

**MONTH.** One calendar month.

**PERSON.** Extends to and includes person, persons, firm, corporation, copartnership, trustee, lessee, or receiver. Whenever used in any clause prescribing and imposing a penalty, the terms **PERSON** or **WHOEVER** as applied to any unincorporated entity shall mean the partners or members thereof, and as applied to corporations, the officers or agents thereof.

**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.

**TOWNSHIP.** The township or townships in which the town is located.

**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.

**YEAR.** One calendar year, unless otherwise expressly provided.

#### **§ 10.07 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 nonseverability 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.

#### **§ 10.08 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.

#### **§ 10.09 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.

#### **§ 10.10 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.

#### **§ 10.11 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 a Saturday, Sunday, or a state holiday, it shall be excluded.

#### **§ 10.12 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.

#### **§ 10.13 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.

#### **§ 10.14 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.

#### **§ 10.15 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.

#### **§ 10.16 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.

## **TITLE II: ADMINISTRATION**

### Chapter

- 20. GENERAL PROVISIONS**
- 21. TOWN COUNCIL**
- 22. TOWN OFFICIALS**
- 23. FINANCE**
- 24. ORDINANCE VIOLATIONS BUREAU**
- 25. TOWN POLICIES**

## **CHAPTER 20: GENERAL PROVISIONS**

### Section

- 20.01 Compensation of officers and employees
- 20.02 Street Addresses for Property

### **§ 20.01 COMPENSATION OF OFFICERS AND EMPLOYEES.**

Officers and employees of the town shall be compensated at a rate as established by Town Council ordinance from time to time.

### **§ 20.02 STREET ADDRESSES FOR PROPERTIES WITHIN THE CORPORATE LIMITS, TOWN OF LINDEN, INDIANA**

(A) Parcels of real property within the corporate limits of the Town of Linden, Montgomery County, Indiana, are hereby assigned and shall be hereafter referred to by street address as set forth in a document entitled Town of Linden - Alphabetical Listing of Numerical addresses, which is to be kept in the office of the Clerk-Treasurer.

(B) Within a reasonable time, the Clerk-Treasurer shall provide each property owner within the corporate limits notice of the street address assigned to such parcel; further that, such notice shall advise the property owner that the assigned street address should be appropriately displayed on the exterior of the building especially to facilitate the ability of emergency service vehicles to identify the property.

(C) The notice referred to in Section 2 above may be given by the Linden Municipal Water Works to the consumers thereof, since virtually all property parcels are customers of the water works. To the extent that a parcel of property is not a user of the water works, a separate notification should be given.

## **CHAPTER 21: TOWN COUNCIL**

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**GENERAL PROVISIONS**

**§ 21.01 TERM OF OFFICE.**

Except as otherwise provided in I.C. 36-5-2-3(b), (c), (d) or (e), the term of office of a member of the Town Council is four years, beginning at noon January 1 after the member's election and continuing until the member's successor is elected and qualified.

**§ 21.02 RESIDENCY REQUIRED.**

(A) A member of the Town Council must reside within:

- (1) The town as provided in Indiana Constitution, Article 6, Section 6; and
- (2) The district from which the member was elected, if applicable.

(B) A member of the Town Council who is elected by the voters of a district forfeits office if the member ceases to be a resident of the district.

(C) A member of the Town Council who is elected by the voters of the entire town but is elected or selected as a candidate from a district forfeits office if the member ceases to be a resident of the district.

(D) An at-large member of the Town Council forfeits office if the member ceases to be a resident of the town.  
(IC. 36-5-2-6)

**§ 21.03 POWERS AND DUTIES.**

The Town Council may:

- (A) Adopt ordinances and resolutions for the performance of functions of the town;
- (B) Purchase, hold, and convey any interest in property for the use of the town; and

(C) Adopt and use a common seal.

#### **§ 21.04 PRESIDENT.**

The Town Council shall select one of its members to be its president for a definite term, which may not exceed his or her term of office as a member of the Town Council.

### ***MEETINGS; GENERAL PROVISIONS***

#### **§ 21.10 OPEN MEETINGS.**

All meetings of the Town Council shall be held in accordance with state law regarding open meetings, being I.C. 5-14-1.5.

#### **§ 21.11 EXECUTIVE SESSIONS.**

(A) As used in this section, *PUBLIC OFFICIAL* means a person:

- (1) Who is a member of a governing body of a public agency; or
- (2) Whose tenure and compensation are fixed by law and who executes an oath.

(B) Executive sessions may be held only in the following instances:

- (1) Where authorized by federal or state statute.
- (2) For discussion of strategy with respect to any of the following:
  - (a) Collective bargaining.
  - (b) Initiation of litigation or litigation that is either pending or has been threatened specifically in writing.
  - (c) The implementation of security systems.
  - (d) The purchase or lease of real property by the Town Council up to the time a contract or option to purchase or lease is executed by the parties. However, all such strategy discussions must be necessary for competitive or bargaining reasons and may not include competitive or bargaining adversaries.

(3) Interviews with industrial or commercial prospects or agents of industrial or commercial prospects by the Department of Commerce, the state Development Finance

Authority, the Film Commission, the state Business Modernization and Technology Corporation, or Economic Development Commissions.

- (4) To receive information about and interview prospective employees.
- (5) With respect to any individual over whom the governing body has jurisdiction:
  - (a) To receive information concerning the individual's alleged misconduct; and
  - (b) To discuss, before a determination, the individual's status as an employee, a student, or an independent contractor who is a physician.
- (6) For discussion of records classified as confidential by state or federal statute.
- (7) To discuss before a placement decision an individual student's abilities, past performance, behavior, and needs.
- (8) To discuss a job performance evaluation of individual employees. This subdivision does not apply to a discussion of the salary, compensation, or benefits of employees during a budget process.
- (9) When considering the appointment of a public official, to do the following:
  - (a) Develop a list of prospective appointees.
  - (b) Consider applications.
  - (c) Make one initial exclusion of prospective appointees from further consideration.
  - (d) Notwithstanding I.C. 5-14-3-4(b)(12), the Town Council may release and shall make available for inspection and copying in accordance with I.C. 5-14-3-3 identifying information concerning prospective appointees not initially excluded from further consideration. An initial exclusion of prospective appointees from further consideration may not reduce the number of prospective appointees to fewer than three unless there are fewer than three prospective appointees. Interviews of prospective appointees must be conducted at a meeting that is open to the public.
- (10) To train school board members with an outside consultant about the performance of the role of its members as public officials.
- (11) To prepare or score examinations used in issuing licenses, certificates, permits, or

registrations under I.C. 25.

(C) A final action must be taken at a meeting open to the public.

(D) Public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under division (B). The requirements stated in §§ 31.023 and 31.024 for memoranda and minutes being made available to the public is modified as to executive sessions in that the memoranda and minutes must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given. The Town Council shall certify by a statement in the memoranda and minutes of the Town Council that no subject matter was discussed in the executive session other than the subject matter specified in the public notice.

(E) The Town Council may not conduct an executive session during a meeting, except as otherwise permitted by applicable statute. A meeting may not be recessed and reconvened with the intent of circumventing this division.

#### **§ 21.12 NOTICE OF MEETINGS.**

(A) Regular meetings of the Town Council shall be held at a time and place established by the Town Council.

(B) Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting shall be given by the Town Council by posting a copy of the notice at the principal office of the Town Council, or if no such office exists, at the building where the meeting is to be held.

#### **§ 21.13 AGENDA.**

(A) The Town Council, when utilizing an agenda, shall post a copy of the agenda at the entrance to the location of the meeting prior to the meeting. A rule, regulation, ordinance, or other final action adopted by reference to agenda number or item alone is void.

(B) The Town Council shall designate a person who shall prepare the agenda for each meeting.

#### **§ 21.14 RECORD OF MEETINGS.**

As the meeting progresses, the following memoranda shall be kept:

(A) The date, time, and place of the meeting;

(B) The members of the Town Council recorded as either present or absent;

- (C) The general substance of all matters proposed, discussed, or decided;
- (D) A record of all votes taken, by individual members if there is a roll call; and
- (D) Any additional information required under I.C. 5-1.5-2-2.5 or I.C. 5-1-16.

**§ 21.15 QUORUM.**

A majority of all the elected members of the Town Council constitutes a quorum.

**§ 21.16 CLERK OF COUNCIL; TIE-BREAKING VOTE.**

(A) The Town Clerk-Treasurer is the Clerk of the Town Council.

(B) Whenever the Town Council has an even number of members for any reason, the Clerk Treasurer is an ex officio member for the purpose of casting the deciding vote to break a tie.

***MEETINGS; RULES OF PROCEDURE***

**§ 21.20 PRESIDING OFFICER.**

The Council President shall take the chair at the hour appointed, or to which the Council shall have adjourned, and shall immediately call the members to order; whereupon, the Clerk of Council shall proceed to call the roll of members. If a quorum is present, the Clerk of Council shall so announce and the Council shall proceed with the order of business.

**§ 21.21 QUORUM FOR CONDUCTING BUSINESS.**

(A) A quorum shall consist of a majority of the entire Council, including the Council President. A quorum shall be necessary to transact the business of the Town Council.

(B) If no quorum is present, the Council shall not thereby stand adjourned, but the members present shall adjourn or recess the Council by a majority vote.

**§ 21.22 ABSENCE OF PRESIDENT.**

At any meeting of the Council where a majority shall be assembled, and if the President is temporarily absent, but within or near the community, the Clerk of Council shall preside and call the roll, whereupon the Council shall elect a Temporary Chairperson from its membership. In the event that the absence of the President shall be of a more permanent nature, a President Pro Tern shall be elected.

### **§ 21.23 DUTIES OF THE PRESIDENT.**

(A) The President shall serve as the Chair, shall preserve order and decorum and may speak to points of order in preference to other members, and shall decide all questions of order subject to appeal.

(B) If the President refuses to allow the Council members to exercise their right to appeal a decision of the Chair, the Council members may consider and pass upon the matter in spite of the Chair's failure to grant them appeal.

(C) The President shall have the power to require the Council room to be cleared, or to have any disorderly person or persons ejected, in case of any disturbances or disorderly conduct which prevent the meeting from being continued in an orderly manner.

(D) Nothing in this code shall preclude the President from making or seconding a motion, or from voting on any matters coming before the Council.

### **§ 21.24 DUTIES OF COUNCIL MEMBERS.**

(A) While the President is stating the motion, or deciding a point of order, the members shall be seated and no member shall leave the Council room during the session without permission from the presiding officer.

(B) Every member, prior to his or her speaking, making a motion or seconding the same, shall address the presiding officer and shall not proceed with his or her remarks until recognized and named by the Chair.

(C) A member so recognized by the Chair shall confine himself or herself to the question under debate.

(D) No member shall speak more than once on the same question, except by permission of the Chair, and then not until every other member desiring to speak shall have had an opportunity to do so.

(E) No member shall speak longer than five minutes at any one time, except by consent of the Chair.

(F) While a member is speaking, no member shall hold any private discussion, nor pass between the speaker and the Chair.

(G) A member, when called to order by the Chair, shall thereupon discontinue speaking. The order or ruling of the Chair shall be binding and conclusive, subject only to the right to appeal.

(H) Any member may appeal to the Council from a ruling of the Chair and, if the appeal is seconded, the member making the appeal may briefly state his or her reason for the same, and the Chair may briefly explain his or her ruling; but there shall be no debate on the appeal and no other member shall participate in the discussion. The Chair shall then put the question, "Shall the decision of the Chair be overruled?" Otherwise, it shall be sustained.

(B) The right of a member to address the Council on a question of personal privilege shall be limited to cases in which his or her integrity, character or motives are assailed, questioned or impugned.

#### **§ 21.25 SECONDING OF MOTIONS REQUIRED.**

No motion shall be put or debated in the Council or in committee unless it be seconded. When a motion is seconded, it shall be stated by the presiding officer before debate.

#### **§ 21.26 WITHDRAWAL OF MOTIONS.**

After a resolution or a motion is stated by the President, it shall be deemed to be in the possession of the Council, but it may be withdrawn by the maker thereof with or without the consent of the Council member seconding the motion prior to the call for the vote by the President.

#### **§ 21.27 DIVISION OF QUESTIONS.**

If any question under consideration contains several distinct propositions, the Council, by a majority vote of the members present, may divide such questions.

#### **§ 21.28 RECORD OF MOTIONS.**

In all cases where a resolution or motion is entered in the journal, the name of the member moving and seconding the same shall be entered.

#### **§ 21.29 VOTE.**

(A) The ayes and nays shall be taken upon the passage of all ordinances and on all propositions to create any liability against the town, or for the expenditure or appropriation of its money, and upon any question and in all other cases at the request of any member of the Council. When the Clerk of Council has commenced to call the roll of the Council for the taking of a vote by "Ayes" and "Nays," all debate on the question before the Council shall be deemed concluded, and during the taking of the vote a member shall be permitted to briefly explain his or her vote and shall respond to the calling of his or her name by the Clerk of Council by answering "Aye" or "Nay," as the case may be.

(B) The names of each member of the Council shall be listed on the official copy of every ordinance passed indicating specifically the names of those voting “Aye” and those voting “Nay.”

(C) An abstention is neither an affirmative vote, nor a negative vote. Regardless of the number of abstentions, and except as otherwise provided by law, an affirmative vote of the majority of the Council members is required to pass a motion, ordinance, resolution, or other action of the Town Council.

(D) The President shall announce the result of the Council’s vote and such votes shall be entered in the journal of the proceedings.

### **§ 21.30 PRECEDENCE OF MOTION.**

When a question is before the Council, no motion shall be received, except as specified in this section, and which shall have precedence in the following order:

- (A) To fix the time to which to adjourn;
- (B) To adjourn;
- (C) To take a recess;
- (D) To raise a question of privilege;
- (E) To call for the orders of the day;
- (F) To lay on the table;
- (G) To call for the previous question;
- (H) To postpone to a certain time;
- (I) To refer to committee;
- (J) To amend;
- (K) To postpone indefinitely; and
- (L) To the main motion.

### **§ 21.31 UNDEBATABLE MOTIONS AND EXCEPTIONS TO ORDER.**

The motion to adjourn or to lay on the table shall be decided without debate, and the motion to fix the time to which to adjourn and the motion to adjourn shall always be in order, except:

- (A) When a member is in possession of the floor;
- (B) When the roll call votes are being called;
- (C) While the members are voting;
- (D) When adjournment was the last preceding motion; or
- (E) When it has been decided that the “previous question” shall be taken.

**§ 21.32 MOTION TO ADJOURN.**

A motion to adjourn cannot be amended; but a motion to adjourn to a given day or time shall be open to amendment and debate.

**§ 21.33 MOTION TO POSTPONE INDEFINITELY.**

When a question is postponed indefinitely, it shall not be taken up again before the next regular meeting.

**§ 21.34 MOTION TO AMEND.**

A motion to amend an amendment shall be in order, but a motion to amend an amendment to an amendment shall not be entertained.

**§ 21.35 AMENDMENTS.**

Only one amendment at a time may be offered to any question before the Council. The vote shall first be taken on the amendment and, if the amendment passes, then further amendments may be proposed. Finally, a vote shall be taken on the principal motion as finally amended.

**§ 21.36 RECONSIDERATION.**

(A) A vote or question may be reconsidered at any time during the same meeting, or at the first regular meeting held thereafter. A motion for reconsideration, once having been made and decided in the negative, shall not be renewed. A matter once having been decided and a motion to reconsider such matter having been defeated, it may nonetheless come before the Council at a

future time by way of a motion to rescind or as a new motion. If the Chair determines that new facts are to be presented to the Council, or that there is a likelihood that the Council will reverse its previous decision, the Chair shall rule the motion in order. If a motion is continuously brought before the Council and rejected, the Chair may rule its reintroduction under a motion to rescind or as a new motion to be out of order.

(B) No motion to reconsider the approval or denial of the recommendation of an advisory body required to hold public hearings shall be entertained except at the same meeting at which the original action was taken or after the matter has been referred to the advisory body for a further hearing and recommendation.

(C) A motion to reconsider must be made and seconded by members who voted on the prevailing side of the question to be reconsidered, unless otherwise provided by law; provided, however, that where a motion has received a majority vote in the affirmative, but is declared lost solely on the ground that a greater number of affirmative votes is required by statute for the passage or adoption of such motion, then in such case a motion to reconsider may be made and seconded only by those who voted in the affirmative on such question to be reconsidered, so long as the issue presented is the same, no new information is forthcoming, and the rights of third parties have not intervened.

#### **§ 21.37 VISITORS AND PETITIONERS.**

Except during the time allotted for public discussion and comments, no person, other than a member of the Council, shall address that body, except with the consent of a majority of the members present.

#### **§ 21.38 REPORTS, COMMUNICATIONS, PETITIONS, AND THE LIKE.**

All communications, reports, petitions or any other papers addressed to the Council shall be made available to the Clerk of Council prior to the meeting. The Clerk of Council shall endeavor to distribute copies or read such material to the members of the Council.

#### **§ 21.39 ADOPTION OF ROBERTS RULES OF ORDER, REVISED.**

The rules of parliamentary practice comprised in the latest published edition of Roberts Rules of Order, Revised shall govern the Council in all cases to which they are applicable and in which they are not inconsistent with the ordinances of the town including these rules, or the statutes of the state.

#### **§ 21.40 TEMPORARY SUSPENSION OF RULES; AMENDMENT OF RULES.**

The rules of the Council may be temporarily suspended, altered or amended, by concurrence of a majority vote of all the Council members then in office.

### ***ORDINANCES AND RESOLUTIONS***

#### **§ 21.50 MAJORITY VOTE; WHEN REQUIRED.**

(A) A requirement that an ordinance, resolution, or other action of the Town Council be passed by a majority vote means at least a majority vote of all the elected members.

(B) A majority vote of the Town Council is required to pass an ordinance unless a greater vote is required by statute.

#### **§ 21.51 TWO-THIRDS VOTE; WHEN REQUIRED.**

(A) A requirement that an ordinance, resolution, or other action of the Town Council be passed by a two-thirds vote means at least a two-thirds vote of all the elected members.

(B) A two-thirds vote of all the elected members, after unanimous consent of the members present to consider the ordinance, is required to pass an ordinance of the Town Council on the same day or at the same meeting at which it is introduced.

(C) Division (B) does not apply to the following:

(1) A zoning ordinance or an amendment to a zoning ordinance adopted under I.C. 36-7.

(2) An ordinance to increase the number of Town Council members adopted under I.C. 36-5-2-4.2, unless the ordinance also establishes new legislative body districts.

#### **§ 21.52 DATE OF ADOPTION; PUBLICATION.**

(A) An ordinance, order, or resolution passed by the Town Council is considered adopted when it is signed by the President of Council. If required by statute, an adopted ordinance, order, or resolution must be promulgated or published before it takes effect.

(B) An ordinance prescribing a penalty for a violation must, before it takes effect, be published in the manner prescribed by I.C. 5-3-1 unless:

(1) It is published under I.C. 36-1-5; or

(2) It declares an emergency requiring its immediate effectiveness and is posted in:

(a) One public place in each district in the town; or

(b) A number of public places in the town equal to the number of Town Council members, if the town has abolished legislative body districts under I.C. 36-5-2-10.

(C) This section does not apply to a zoning ordinance or amendment to a zoning ordinance, or a resolution approving a comprehensive plan, that is adopted under I.C. 36-7.

### **§ 21.53 PUBLIC RECORDS AVAILABLE.**

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

### **§ 21.54 RECORD OF ORDINANCES.**

(A) Within a reasonable time after an ordinance of the Town Council is adopted, the Clerk-Treasurer shall record it in a book kept for that purpose. The record must include:

(1) The signature of the President of Council;

(2) The attestation of the Clerk-Treasurer; and

(3) The date of each recorded item.

(B) The record or a certified copy of it constitutes presumptive evidence of the adoption of the ordinance.

## **CHAPTER 22: TOWN OFFICIALS**

### Section

#### *Clerk-Treasurer*

- 22.01 Residency requirement
- 22.02 Election; term of office
- 22.03 Powers and duties
- 22.04 Deputies and employees of the Clerk-Treasurer
- 22.05 Office space for the Clerk-Treasurer

*Town Marshal*

- 22.10 Creation; appointment; compensation
- 22.11 Removal from office; discipline
- 22.12 Powers and duties
- 22.13 Service as Street Commissioner and Fire Chief
- 22.14 Deputy Marshals; Humane Officer

*Utility Employees*

- 22.20 Utility employees

*Town Attorney*

- 22.30 Town Attorney

***CLERK- TREASURER***

**§ 22.01 RESIDENCY REQUIREMENT.**

The Clerk-Treasurer must reside within the town as provided in Indiana Constitution Article 6, Section 6. The Clerk-Treasurer forfeits office if the Clerk-Treasurer ceases to be a resident of the town.

**§ 22.02 ELECTION; TERM OF OFFICE.**

(A) *Election.* The Clerk-Treasurer shall be elected under I.C. 3-10-6 or I.C. 3-10-7 by the voters of the whole town.

(B) *Term of office.* Except as provided in I.C. 36-5-6-3(c) or (d), the term of office of the Clerk-Treasurer is four years, beginning at noon on January 1 after election and continuing until a successor is elected and qualified.

**§ 22.03 POWERS AND DUTIES.**

(A) The Clerk-Treasurer is both the Town Clerk and the Town Fiscal Officer.

(B) The Clerk-Treasurer may administer oaths, take depositions, and take acknowledgments of instruments required by statute to be acknowledged.

(C) The Clerk-Treasurer shall do the following:

- (1) Receive and care for all town money and pay the money out only on order of the Town Council;
- (2) Keep accounts showing when and from what sources the Clerk-Treasurer has received town money and when and to whom the Clerk-Treasurer has paid out town money;
- (3) Prescribe payroll and account forms for all town offices;
- (4) Prescribe the manner in which creditors, officers, and employees shall be paid;
- (5) Manage the finances and accounts of the town and make investments of town money;
- (6) Prepare for the Town Council the budget estimates of miscellaneous revenue, financial statements, and the proposed tax rate;
- (7) Maintain custody of the town seal and the records of the Town Council;
- (8) Issue all licenses authorized by statute and collect the fees fixed by ordinance;
- (9) Serve as Clerk of the Town Council by attending its meetings and recording its proceedings;
- (10) Administer oaths, take depositions, and take acknowledgment of instruments that are required by statute to be acknowledged, without charging a fee; and
- (11) Perform all other duties prescribed by statute.

#### **§22.04 DEPUTIES AND EMPLOYEES OF THE CLERK-TREASURER.**

(A) The Clerk-Treasurer shall appoint the number of deputies and employees needed for the effective operation of the office, with the approval of the Town Council. The Clerk-Treasurer's deputies and employees serve at the Clerk-Treasurer's pleasure.

(B) If the town owns a utility and the Clerk-Treasurer is directly responsible for the billing and collection of that utility's rates and charges, the Clerk-Treasurer shall appoint those employees who are also responsible for that billing and collection. These employees serve at the Clerk-Treasurer's pleasure.

(C) (1) The Clerk-Treasurer may hire or contract with competent attorneys or legal research assistants on terms the Clerk-Treasurer considers appropriate.

(2) Appropriations for the salaries of attorneys and legal research assistants employed under this division (C) shall be approved in the annual budget.

#### **§ 22.05 OFFICE SPACE FOR THE CLERK-TREASURER.**

If office space exists in a building owned or leased by the town, the Town Council shall provide suitable office space for the Clerk-Treasurer and staff and records of the Clerk-Treasurer.

### ***TOWN MARSHAL***

#### **§ 22.10 CREATION; APPOINTMENT; COMPENSATION.**

There is hereby created the office of Town Marshal of the Town of Linden. The Town Marshal shall be employed and appointed by the Board as provided by law. Upon the appointment of the Town Marshal, he shall be presented with a certificate and contract of terms of employment, which terms shall be those as may from time to time be negotiated between the Board and the Town Marshal, otherwise consistent with the powers and duties of a Town Marshal as provided by law. The Town Marshal shall be paid such compensation as shall be determined by the Board annually, on or before December 31, to take and be in effect for the next succeeding calendar year. In the event of the resignation or other termination of the employment of the Town Marshal during the year, his salary shall be deemed payable on a monthly basis, shall be pro-rated to the end of the month during which such termination of employment occurs, and he shall not be paid for any month in which no services are performed. The salary of the Town Marshal shall be in addition to any allowance for expenses included in his contract of employment.

#### **§ 22.11 REMOVAL FROM OFFICE; DISCIPLINE.**

The Town Marshal serves at the pleasure of the Town Council. However, before terminating or suspending a Town Marshal who has been employed by the town for more than six months after completing the minimum basic training requirements adopted by the Law Enforcement Training Board under I.C. 5-2-1-9, the Town Council must conduct the disciplinary removal and appeals procedures prescribed by I.C. 36-8 for city fire and police departments.

#### **§ 22.12 POWERS AND DUTIES.**

(A) The Town Marshal is the chief police officer of the town and has the powers of other

law enforcement officers in executing the orders of the Town Council and enforcing laws.

(B) The Town Marshal or his or her deputy:

- (1) Shall serve all process directed to him or her by the Town Court or Town Council;
- (2) Shall arrest without process all persons who commit an offense within his or her view, take them before a court having jurisdiction, and detain them in custody until the cause of the arrest has been investigated;
- (3) Shall suppress breaches of the peace;
- (4) May, if necessary, call the power of the town to his or her aid;
- (5) May execute search warrants and arrest warrants; and
- (6) May pursue and jail persons who commit an offense.

**§ 22.13 SERVICE AS STREET COMMISSIONER AND FIRE CHIEF.**

The Town Council may require the Town Marshal to serve as the Street Commissioner, Chief of the Fire Department, or both.

**§ 22.14 DEPUTY MARSHALS; HUMANE OFFICER.**

(A) The Town Council may by ordinance authorize the Town Marshal to appoint deputy marshals. Deputy marshals have the powers and liabilities of the Town Marshal in executing the orders of the Town Council or enforcing laws.

(B) One deputy marshal may be designated as the Town Humane Officer. He or she has the duties prescribed by I.C. 36-8 for city humane officers.

(C) The Town Council shall fix the amount of bond, compensation, and term of service of deputy marshals. The Town Marshal may dismiss a deputy marshal at any time. However, a deputy marshal who has been employed by the town for more than six months after completing the minimum basic training requirements adopted by the Law Enforcement Training Board under I.C. 5-2-1-9 may be dismissed only if the procedure prescribed by § 22.11 is followed.

***Utility Employees***

## **§22.20 Utility Employees**

All municipal utilities now owned by or hereafter acquired by the town shall be operated and administered by and through the Board. The Board shall hire such employees or administrators to conduct the business of the utilities as it may from time to time deem necessary or convenient.

### ***Town Attorney***

## **§22.30 Town Attorney**

There is hereby created and established for the town the Department of Law, which shall consist of the Town Attorney.

(A) The Town Attorney shall be a person holding an unlimited license to practice law within the State of Indiana, and the residence of such attorney shall not be a condition of employment.

(B) The Town Attorney shall be employed by the Board by virtue of a contract of employment, either oral or written, but in no event shall such contract of employment be for a term longer than a calendar year, but shall be renewable from year to year unless terminated by action of the Board, with reasonable notice of termination communicated to the Town Attorney.

(C) Compensation of the Town Attorney shall be determined annually as are the salaries of other town officials, as hereinafter set out.

(D) In the event of the termination of employment of the Town Attorney, whether voluntary or involuntary, he shall be deemed to be paid on a semi-annual basis and compensation to the Town Attorney shall be pro-rated to the end of the payment period in which such employment is terminated.

(E) The annual compensation of the Town Attorney shall be in such amount and for the sole purpose of the general retaining of the services of the Town Attorney, his attendance at and participation in board meetings for general town purposes as may be requested by the Board, his services in preparation of general town ordinances and resolutions, and the rendering of routine legal advice, whether in person or by telephone. The Town Attorney shall be entitled to additional payment, over and above such annual compensation, for actual expenses advanced on behalf of the town, postage, photocopy, long distance telephone or other unusual office expenses advanced or assumed by the attorney's private law office. The services of the attorney in performance of functions on behalf of the town utilities, conduct of litigation, negotiation of disputes and the like shall be the subject of separate compensation agreements.

## CHAPTER 23: FINANCE

### Section

#### *Disbursement of Funds*

- 23.01 Appropriation required
- 23.02 Issue of warrants
- 23.03 Allowance of claims
- 23.04 Warrants for payment of claims
- 23.05 Payment of compensation to officer or employee prior to vacation leave
- 23.06 Claim payments in advance of allowance
- 23.07 Transfer of funds

#### *Budgets*

- 23.30 Preparation of annual budget estimates
- 23.31 Preparation and approval of ordinance fixing tax rate and making annual appropriations
- 23.32 Increase or decrease of appropriations after approval of ordinance

### ***DISBURSEMENT OF FUNDS***

#### **§ 23.01 APPROPRIATION REQUIRED.**

Unless a statute provides otherwise, town monies may be disbursed only after an appropriation made by ordinance of the Town Council and recorded in a book kept for that purpose by the Town Council. Each appropriation must be made from the fund against which the expenses arose.

#### **§ 23.02 ISSUE OF WARRANTS.**

(A) The Town Council or a board of the town may order the issuance of warrants for payment of money by the town only at a meeting of the Town Council or board.

(B) A town officer who violates this section forfeits his or her office.

#### **§ 23.03 ALLOWANCE OF CLAIMS.**

(A) Except as provided in section § 23.06, the Town Council or a board of the town may allow a claim:

(1) Only at a meeting of the town Council or board; and

(2) Only if the claim was filed in the manner prescribed by I.C. 5-11-10-2 at least five days before the meeting.

(B) A town officer who violates this section forfeits his or her office.

#### **§ 23.04 WARRANTS FOR PAYMENT OF CLAIMS.**

(A) As used in this section, *CLAIM* means a bill or an invoice submitted for goods or services.

(B) Except as provided in § 23.06, a warrant for payment of a claim against a town may be issued only if the claim is:

(1) Supported by a fully itemized invoice or bill under I.C. 5-11-10-1.6;

(2) Filed with the town fiscal officer;

(3) Certified by the fiscal officer before payment that each invoice is true and correct; and

(4) Allowed by the Town Council or by the board of the town having jurisdiction over allowance of the payment of the claim.

(C) The certification by the fiscal officer under division (B)(3) must be on a form prescribed by the State Board of Accounts.

#### **§ 23.05 PAYMENT OF COMPENSATION TO OFFICER OR EMPLOYEE PRIOR TO VACATION LEAVE.**

One to three days before the vacation leave period of a town officer or employee begins, the town may pay him or her the amount of compensation he or she will earn while he or she is on vacation leave.

#### **§ 23.06 CLAIM PAYMENTS IN ADVANCE OF ALLOWANCE.**

(A) The Clerk-Treasurer is authorized to make claim payments in advance of Town Council

allowance for the following types of expenses:

- (1) Property or services purchased or leased from the federal government or an agency or a political subdivision of the federal government;
- (2) License fees or permit fees;
- (3) Insurance premiums;
- (4) Utility payments or utility connection charges;
- (5) Federal grant programs if advance funding is not prohibited and the contracting party provides sufficient security for the amount advanced;
- (6) Grants of state funds authorized by statute;
- (7) Maintenance agreements or service agreements;
- (8) Lease agreements or rental agreements;
- (9) Principal and interest payments on bonds;
- (10) Payroll;
- (11) State, federal, or county taxes;
- (12) Expenses that must be paid because of emergency circumstances; and
- (13) Expenses described in an ordinance.

(B) Each payment of expenses under this section must be supported by a fully itemized invoice or bill and certification by the fiscal officer.

(C) The Town Council shall review and allow the claim at the Council's next regular or special meeting following the preapproved payment of the expense.

### **§ 23.07 TRANSFER OF FUNDS.**

Notwithstanding I.C. 8-14-1 and I.C. 8-14-2, the town may transfer money distributed to the town from the motor vehicle highway account under I.C. 8-14-1, the local road and street account under I.C. 8-14-2, or the motor vehicle highway account under I.C. 8-14-1 and the local

road and street account under I.C. 8-14-2 to any other town fund after the passage of an ordinance or a resolution by the Town Council that specifies the amount of the transfer, the funds involved, the date of the transfer, and the general purpose of the transfer. However, the total amount of all money transferred by the town under this section may not exceed \$40,000.

## ***BUDGETS***

### **§ 23.30 PREPARATION OF ANNUAL BUDGET ESTIMATES.**

Before the publication of notice of budget estimates required by I.C. 6-1.1-17-3, the town shall formulate a budget estimate for the ensuing budget year in the following manner, unless the town provides by ordinance for a different manner:

(A) Each department head shall prepare for his or her department an estimate of the amount of money required for the ensuing budget year, stating in detail each category and item of expenditure he or she anticipates;

(B) The town fiscal officer shall prepare an itemized estimate of revenues available for the ensuing budget year, and shall prepare an itemized estimate of expenditures for other purposes above the money proposed to be used by the departments;

(C) The President of Council shall meet with the department heads and the fiscal officer to review and revise their various estimates; and

(D) After the President's review and revision, the fiscal officer shall prepare for the President a report of the estimated department budgets, miscellaneous expenses, and revenues necessary or available to Finance the estimates.

### **§ 23.31 PREPARATION AND APPROVAL OF ORDINANCE FIXING TAX RATE AND MAKING ANNUAL APPROPRIATIONS.**

The town fiscal officer shall present the report of budget estimates to the Town Council under I.C. 6-1.1-17. After reviewing the report, the Town Council shall prepare an ordinance fixing the rate of taxation for the ensuing budget year and an ordinance making appropriations for the estimated department budgets and other town purposes during the ensuing budget year. The Town Council, in the appropriation ordinance, may change any estimated item from the figure submitted in the report of the fiscal officer. The Town Council shall promptly act on the appropriation ordinance.

### **§ 23.32 INCREASE OR DECREASE OF APPROPRIATIONS AFTER APPROVAL OF ORDINANCE.**

After the passage of the appropriation ordinance, the Town Council may make further or additional appropriations by ordinance, unless their result is to increase the tax levy set under I.C. 6-1.1-17. The Town Council may, by ordinance, decrease any appropriation set by ordinance.

## **CHAPTER 24: ORDINANCE VIOLATIONS BUREAU**

### Section

- 24.01 Establishment
- 24.02 Violations Clerk designated
- 24.03 Administration
- 24.04 Schedule of fees
- 24.05 Noncompliance; enforcement

### **§ 24.01 ESTABLISHMENT.**

There is hereby established a town Ordinance Violations Bureau, pursuant to I.C. 33-36-2-1 *et seq.*, as amended.

### **§ 24.02 VIOLATIONS CLERK DESIGNATED.**

The Town Council shall appoint a person to serve as the Violations Clerk, who may be the Town Clerk-Treasurer or the Town Manager, to administer the Ordinance Violations Bureau.

### **§ 24.03 ADMINISTRATION.**

(A) The Violations Clerk and his or her staff, as agents, shall accept written appearances, waivers of trial, admissions of violations, and payment of civil penalties of not more than \$100 in ordinance violation cases, subject to the schedule of civil penalties adopted under § 34.04.

(B) Civil penalties shall be paid to, receipted, and accounted for by the clerk under procedures provided for by the state board of accounts. Payment of civil penalties under this chapter may be made in person or by mail to the Violations Clerk.

(C) A person charged with an ordinance or code violation under this chapter is entitled to a trial before a court as provided by law, unless the person waives the right to trial and enters an admission of the violation with the Violations Clerk. Upon such an admission, the Violations

Clerk shall assess and receive from the violator the amount prescribed by the schedule of civil penalties established and adopted under § 34.04.

(D) If a person charged with a violation under this chapter wants to exercise the right to trial, the person shall appear before the Violations Clerk and deny the violation or enter a written denial with the Violations Clerk.

#### **§ 24.05 NONCOMPLIANCE; ENFORCEMENT.**

If a person denies an ordinance or code violation as set out herein, or fails to pay and satisfy the civil penalty assessed by the Violations Clerk after having entered an admission of violation, or fails to deny or admit the violation of any of the provisions adopted by reference in § 34.04, then the Violations Clerk shall report this fact to the Town Attorney, who may then initiate an action to prosecute the ordinance violation.

### **CHAPTER 25: TOWN POLICIES**

#### Section

#### *Tort Claims Against Town*

- 25.01 Clerk-Treasurer to receive notice
- 25.02 Form and service of notice

#### **§ 25.01 CLERK-TREASURER TO RECEIVE NOTICE.**

The town Clerk-Treasurer is hereby designated as the town official to receive notice of a tort claim under I.C. 34-13-3-1 et seq.

#### **§ 25.02 FORM AND SERVICE OF NOTICE.**

(A) The notice of a tort claim against the town must be in writing and must be delivered in person or by registered or certified mail.  
(34-13-3-12)

(B) The notice must comply with the provisions of I.C. 34-13-3-1 *et seq.*

### **TITLE III: ANNEXATIONS**

#### Chapter

30. ANNEXATIONS

**CHAPTER 30: ANNEXATIONS**

**See attached Appendix A**

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**TITLE IV: PUBLIC WORKS**

Chapter

## 40. PUBLIC WORKS

### CHAPTER 40: PUBLIC WORKS

#### Section

#### *Water Department*

- 40.01 Establishment
- 40.02 Water Utility Board
- 40.03 Definitions
- 40.04 General rules for the sale of water
- 40.05 Adoption and promulgation of rules and regulations
- 40.06 Types and availability of service; basis for structuring rates
- 40.07 Minimum charges
- 40.08 Collection charges and applicability thereof
- 40.09 Disconnection; reconnection of service
- 40.10 Application for service
- 40.11 Approval of connections
- 40.12 Tap-on fee
- 40.13 Extensions
- 40.14 Separate user metering
- 40.15 Limitation of extensions
- 40.16 Component factors of rates and charges; reasonable return on investment
- 40.17 Establishment of rates and charges and evidence thereof
- 40.18 Prohibitions
- 40.19 Inspections
- 40.20 Right of access for inspection and production of information
- 40.21 Enforcement
- 40.22 Hearing
- 40.23 Backflow preventer
- 40.24 Saving clause
- 40.25 Surface water
- 40.26 Depreciation Account
- 40.27 Improvements to existing water works
- 40.28 Responsibility of Customer

#### *Sewage Department*

- 40.31 Establishment

- 40.32 Sewage Works Board
- 40.33 Definitions
- 40.34 Obligation to connect to system
- 40.35 Regulations for sewer connection
- 40.36 Prohibited discharges into sanitary sewer
- 40.37 Enforcement of prohibited discharges and other regulations
- 40.38 Inspection of private properties by Board
- 40.39 Sewage Works Bond Ordinance and integrity of transcript of proceedings relating to sewage works revenue bonds, dated November 1, 1975
- 40.40 Sewage works service rates
- 40.41 Billing procedures
- 40.42 General rules for sale of sewage utility
- 40.43 Improvements to sewers

#### ***PAYMENT FOR TRASH SERVICES***

- 40.51 Payment for trash services

#### ***WATER DEPARTMENT***

##### **§ 40.01 ESTABLISHMENT.**

There is hereby created the Water Utility Department for the purpose of operating the Municipal Water Utility System (or “water utility”) owned by the town.

##### **§ 40.02 WATER UTILITY BOARD.**

The Water Utility Board shall be the governing body of the Department of Water Utility, and shall consist of the duly elected or appointed members of the Board of Trustees of the town or their designees, which Board shall have the duties and responsibilities of making all decisions relating to the ownership, operation and management of the water utility. The Water Utility Board is hereby empowered to hire such employees as it shall deem necessary and convenient to the operation and maintenance of the water utility system, including but not limited to a Superintendent of Water Utility, bookkeeper or controller, meter reader, attorney, accountant, engineers, maintenance personnel, independent contractors, or such other persons, firms or corporations that shall be necessary to the rendering of adequate water utility service to the town and its environs.

##### **§ 40.03 DEFINITIONS.**

Unless the context specifically indicates otherwise, the meaning of terms used in this

chapter shall be as follows:

***CERTIFIED TERRITORY.*** That geographical area, which is or may hereafter be served by the water utility.

***CROSS-CONNECTION.*** Any physical connection or arrangement between two otherwise separate systems, one of which contains potable water from the town's water system, and the other, water from a private source, water of unknown or questionable safety, or 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.

***CUSTOMER.*** Any person, firm or corporation receiving water utility service through or from the water utility.

***INSPECTOR.*** The person or persons duly authorized by the town, through its Board of Trustees, to inspect or approve the installation of water system connection facilities in the town and their connection to the water utility.

***PUBLIC SERVICE COMMISSION OF INDIANA (PSC).*** The duly constituted agency of the State of Indiana having regulatory authority over the water utility.

***RULES AND REGULATIONS.*** Those standards of service and rules of operation of the water utility binding upon both the customers and the water utility, as set out in this code or as added thereto in accordance with the terms and provisions of this code.

***SUPERINTENDENT.*** The chief administrative official of the water utility of the town, or his authorized deputy, agent, representative or appointee.

***WATER UTILITY.*** All facilities for obtaining, treating, transmitting, distributing and selling of water within the limits and environs of the town.

#### **§ 40.04 GENERAL RULES FOR THE SALE OF WATER.**

The town shall sell water to such persons, firms or corporations within its certified territory as may make appropriate application for such service, promptly pay all water utility bills when rendered, and otherwise comply with the rules and regulations set out in this code, and such other rules and regulations as the Town Council may from time to time hereafter adopt, including but not limited to the following:

(A) Water connection service shall be made only upon request of the owner(s) of real

property to be served and upon the terms and conditions hereinafter set forth.

(B) All owners of property shall execute a written request for service and make a meter deposit as otherwise provided by the existing rules and regulations of the utility prior to service connection on meter installation.

(C) Upon acceptance of the service request and meter deposit by the utility, a contract for service shall exist between the land owner and utility, and the land owner shall be responsible for payment of all water service through that meter or to that property.

(D) Upon request by the property owner and occupier of the premises, an additional contract for service may be made with and billing may be rendered to the occupier of the property; however, this shall not relieve the property owner or the service deposit made from liability for service billing.

(E) The previous customers that have moved from the utilities service area, and who have a delinquent service billing, shall be required to remit the total amount of the delinquency and to make an additional deposit as elsewhere herein set forth, in and when they return to the utilities area of service.

(F) The utility shall not render service to any applicant therefore who shall be indebted to the utility.

(G) This section shall not apply to service contracts in existence during or before February, 1999; however, this section shall apply to any and all persons, firms or corporations applying for a service connection after February, 1999.

(Ord. 1999-1, passed 3-4-99)

#### **§ 40.05 ADOPTION AND PROMULGATION OF RULES AND REGULATIONS.**

In addition to the rules and regulations contained in this code, the Board of Trustees by ordinance or the water utility governing body by resolution may adopt further rules and regulations for the governing body or for the governing of sales of water and of continuing obligatory relations between water customers and the water utility, and the same shall become effective and binding upon both customers and the water utility 30 days following the publication of notice of the adoption of such rules and regulations or by written notification thereof to the customers as shall be determined at the option of the governing board. If notice of the adoption of such rules and regulations shall be published, the same shall be published one time in the Crawfordsville Journal Review, a newspaper in Crawfordsville, Indiana, by title and section identification, and a complete copy thereof made available to the customer at the offices of the water utility; if the governing board shall elect to promulgate such rules and regulations by

written notice to the customers, a true and complete copy of such rules and regulations shall be delivered to the customer by the water utility, either in person or by United States Mail.

**§ 40.06 TYPES AND AVAILABILITY OF SERVICE, AND BASIS FOR STRUCTURING RATES.**

There is hereby established separate classifications of service to be rendered by the water utility:

(A) *General water service.* There shall be but one classification of customers for the general sales of water, and specifically no distinction shall be made among residential, commercial, industrial or similar alleged classifications. A single rate for general water sales shall from time to time be established and be uniformly applicable to all customers purchasing such water.

(B) Other water services may be offered by the water utility upon customer request or negotiation between the customer and the utility upon such terms and conditions as the parties may agree.

**§ 40.07 MINIMUM CHARGES.**

Each customer of the water utility shall pay a minimum monthly charge based upon the size of meter utilized by the customer, and such minimum charges shall be established as other rates of the utility.

**§ 40.08 COLLECTION CHARGES AND APPLICABILITY THEREOF.**

(A) There is hereby established a collection charge of 10% of any net billing which is not be paid within the grace period as hereinafter set forth.

(B) Water bills shall be due as of the date such bills are mailed to the customer, if bills in fact are mailed, or on the date received by the customer, if such bills are personally delivered. Any bill for water service not paid within 15 days from the due date as determined in accordance with this section, shall be subject to the collection charge herein set out. When the fifteenth day following the due date falls on a Sunday or holiday, the first business day thereafter shall be added to the 15 day period.

(Enacted by Ordinance 2002-1, adopted May 2, 2002)

**§ 40.09 DISCONNECTION; RECONNECTION OF SERVICE.**

(A) Bills are due upon receipt and payable by the due date set forth on each bill. A penalty of 10% will be charged to all past due bills. Unpaid bills are subject to disconnection.

When utility payments are not received by the 25<sup>th</sup> day of the month (or the next business day thereafter, if the 25<sup>th</sup> is a weekend or holiday), service will be scheduled for disconnect and a disconnect fee will be assessed. When water and sewer services are disconnected, a penalty fee will be charged and both will be due before service is reestablished. In addition, any outstanding utility balances must be paid in full before utility service can be re-established.

(B) Water bills shall be due as of the date such bills are mailed to the customer, if bills in fact are mailed, or on the date received by the customer, if such bills are personally delivered. Any bill for water service not paid within 15 days from the due date as determined in accordance with this section, shall be subject to the collection charge herein set out. When the fifteenth day following the due date falls on a Sunday or holiday, the first business day thereafter shall be added to the 15 day period.

(C) Any disconnect penalty fees collected by the Town shall be allocated for disbursement as follows: 75% to wastewater utility and 25% to water utility.

#### **§ 40.10 APPLICATION FOR SERVICE.**

Any person, firm or corporation desiring service from the water utility shall make application therefore to the superintendent or controller of the water utility upon such forms and providing such information as may be required at the option of the water utility.

#### **§ 40.11 APPROVAL OF CONNECTIONS.**

The superintendent of the Water Works Utility shall approve all connections or tap-ons to the system, before any construction shall begin.

#### **§ 40.12 TAP-ON FEE.**

Each user of the water utility with meter size of one inch or less, upon being connected to the system, shall pay a connection or tap-on charge for being connected to the system, which charge shall be made directly to the user in the sum of \$450.00; further that, customers requiring any other size meter shall pay the actual cost of labor and materials for the installation of such meter and connection in lieu of a fixed tap-on charge.

#### **§ 40.13 EXTENSIONS.**

Extensions of all distribution or transmission lines shall be made in accordance with the “rules and standards of service for Water Utilities of Indiana”, as now in effect or hereafter amended.

#### **§ 40.14 SEPARATE USER METERING.**

Each user or customer shall be separately metered, whether such user shall be located within one structure or a number of structures, and whether located on multiple lots or within the boundaries of a single lot; except, any customer now receiving water for or on behalf of more than one user, through a single meter, shall at his option continue on a single meter, and the water bill will be computed by dividing the monthly gallonage usage by the number of users and calculating each separate usage quotient thereby obtained by the rate schedule, the sum of the bill so computed to be paid by and the responsibility of the customer in whose name the meter is registered. For purposes of this section, a “user” shall mean any single commercial establishment or any single resident family.

#### **§ 40.15 LIMITATION OF EXTENSIONS.**

The only duty of the water utility in extending water utility service shall be to extend such distribution line to the property line of the customer, it being the customer’s responsibility and liability to provide connection facilities from the property line to the various delivery points of the water upon the premises.

#### **§ 40.16 COMPONENT FACTORS OF RATES AND CHARGES; REASONABLE RETURN ON INVESTMENT.**

All rates and charges now or hereafter to be established and charged for water utility service shall provide sufficient revenue to pay all the legal and other necessary expenses incident to the operation. of the utility, including maintenance cost, operating charges, upkeep, repairs, depreciation, and interest charges on bonds or other obligations; to provide a sinking fund for the liquidation of bonds or other evidences of indebtedness; to provide adequate funds for working capital; to provide adequate funds for making extensions and replacements; to provide funds for payment of any taxes that may be assessed against the utility; to provide funds to compensate the town for rent of physical facilities occupied by the utility; to provide funds for the payment of taxes that the utility would pay were it privately owned; and to provide a reasonable return upon the investment of the town in said utility plant.

#### **§ 40.17 ESTABLISHMENT OF RATES AND CHARGES AND EVIDENCE THEREOF.**

All rates and charges for water utility service shall be established by the Board of Trustees of the town subject to public hearing, rules and regulations and approval of the Public Service Commission of Indiana, insofar as the jurisdiction of that State Agency is applicable; further that the tariff of rates and charges so established is hereby made a part of this code and designated Appendix B.

#### **§ 40.18 PROHIBITIONS.**

(A) 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 town may enter the supply or distribution system of the town, unless such private, auxiliary or emergency water supply and the method of connection and use of such supply shall have been approved by the water utility and by the Environmental Management Board in accordance with Rule 320 IAC 3-9.

(B) It is hereby declared to be illegal and an infraction and violation of the town code for any person, firm or corporation, without the express written consent of the Water Utility Department, to tamper with, turn off, disconnect, re-connect, bypass or otherwise make any adjustment, repair or alteration to a water meter.

#### **§ 40.19 INSPECTIONS.**

(A) It shall be the duty of the water utility to cause inspections to be made of all properties served by the public water system where cross connections with the public water system are deemed possible. The frequency of inspections and re-inspections based on potential health hazards involved shall be as established by the water utility.

#### **§ 40.20 RIGHT OF ACCESS FOR INSPECTION AND PRODUCTION OF INFORMATION.**

(A) Upon presentation of credentials, the representative of the water 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 the town for cross connections. On request, the owner, lessee or occupant of the 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.

#### **§ 40.21 ENFORCEMENT.**

(A) The water utility is hereby authorized and directed to discontinue water service to any property wherein any connection in violation of this chapter 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 or suspected to exist. Water service to such property shall not be restored until the cross connection(s) has been

eliminated in compliance with the provisions of this chapter.

#### **§ 40.22 HEARING.**

(A) If it is deemed by the water utility that a cross connection or an emergency endangers public health, safety or welfare and requires immediate action, and a written to that effect is filed with the Clerk-Treasurer of the town 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 emergency discontinuance.

#### **§ 40.23 BACKFLOW PREVENTER.**

(A) 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.

#### **§ 40.24 SAVING CLAUSE.**

(A) This chapter does not supersede the State Uniform Plumbing Code, but is supplementary to it.

#### **§ 40.25 SURFACE WATER.**

(A) The town hereby confirms it is not now and has never been the owner or maintainer of a surface water collection and drainage system within said town, and denies any responsibility for the maintenance or workability thereof, nor does the town have any map, plan or plat of the location of any such sewers or drains; further that, the town shall not hereafter maintain such sewers or drains.

(B) Solely in the interest of public health and safety, and not as an admission of any prior ownership or control thereof, the town shall hereafter maintain all catch basins now located or hereafter placed by the town or with its specific written consent, in or upon a public right of way, except those on a State of Indiana right of way, within the town. All other catch basins or other facilities being a part of such alleged surface water drainage and collection system, shall not be maintained or controlled by the town.

#### **§40.26 DEPRECIATION ACCOUNT**

(A) There is hereby established among the various accounts of Linden Municipal Water

Utility an account nominated "Depreciation Fund." Monies accumulated in the Depreciation Fund may be utilized for repairs, replacements, or improvements to the physical plant of the Linden Municipal Water Utility.

(B) Monies shall be deposited to the Depreciation Fund solely from the revenues of the Linden Municipal Water Utility, and such deposits shall be made on a monthly basis as may from time to time be determined in rate proceedings for the Linden Municipal Water Utility.

#### **§40.27 IMPROVEMENT OF EXISTING WATER WORKS**

**See attached Appendix C**

#### **§40.28 RESPONSIBILITY OF CUSTOMER TO MAINTAIN CONNECTION FACILITIES**

(A) The only duty of the water utility in extending water utility service shall be to extend a distribution line to the property line of the customer, it being the customer's responsibility and liability to provide and maintain connection facilities from the property line to delivery points of the water upon the customer's premises. Customer shall be under a duty and obligation to maintain and upkeep the connection facilities which deliver water upon their premises. If a customer fails to maintain the connection facilities from any property line to delivery points of water upon their premises, the water utility is hereby authorized and directed to discontinue water service to such property and to take any other precautionary measures deemed necessary to eliminate the leaking and wasting of water. Water service shall be discontinued only after reasonable notice is given to the owner, lessee or occupants of the property or premises where a violation is found or suspected to exist. Water service to such property shall not be restored until proper maintenance or replacement of the connection facilities by the customer has been accomplished.

(Enacted by Ordinance 2001-1, adopted January 4, 2001)

### ***SEWAGE DEPARTMENT***

#### **§ 40.31 ESTABLISHMENT.**

There is hereby created the Sewage Department, for the purpose of operating the Sanitary Sewage Disposal System (or "sewage works") owned by the town.

#### **§ 40.32 SEWAGE WORKS BOARD.**

The Sewage Works Board shall be the governing body of the Department of Sewage Works,

and shall consist of the duly elected or appointed members of the Board of Trustees, which Board shall have the duties and responsibilities of making all decisions relating to the ownership, operation and management of the sewage works. The Sewage Works Board is hereby empowered to hire such employees as it shall deem necessary and convenient to the operation and maintenance of the sewage works system, including but not limited to a Superintendent of Sewage Works, bookkeeper or controller, meter reader, attorney, accountants, engineers, maintenance personnel, and independent contractors, or such other persons, firms or corporations that shall be necessary to the rendering of adequate sewage disposal service to the town and its environs.

### § 40.33 DEFINITIONS.

Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

***B. 0. D. (Biochemical Oxygen Demand).*** The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees C, expressed in milligrams per liter.

***BUILDING SEWER.*** The extension from the building drain to the public sewer or other place of disposal.

***COMBINED SEWER.*** A sewer receiving both surface runoff and sewage.

***COMPATIBLE POLLUTANT.*** Biochemical oxygen demand, suspended solids, pH and fecal coliform bacteria, plus additional pollutants identified in the NPDES permit if the publicly owned 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. Minor incidental removals in the order of 10% to 30% are not considered substantial. Examples of additional pollutants may include:

chemical oxygen demand; total organic carbon; phosphorus and phosphorus compounds; nitrogen and nitrogen compounds; fats, oils and greases of animal or vegetable origin except as prohibited under § 128.131(c) of the Rules and Regulations of the U.S. Environmental Protection Agency Pretreatment Standards.

***GARBAGE.*** Solid wastes from the domestic and commercial 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 one-half inch in any dimension.

***INCOMPATIBLE POLLUTANT.*** Any pollutant which is not a compatible pollutant as herein defined.

***INDUSTRIAL WASTES.*** The liquid wastes from industrial manufacturing processes, trade, or business as distinct from sanitary sewage.

***INSPECTOR.*** The person or persons duly authorized by the town, through its Board of Trustees, to inspect and approve the installation of building sewers and their connection to the public sewer system.

***MAJOR CONTRIBUTING INDUSTRY.*** Any industrial user of the sewage works 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 § 306(a) of the Water Pollution Control Act as amended; 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 wastes, to have a significant impact, either
  - singly or in combination with other contributing industries, on the treatment works or upon the quality of affluent from the treatment works.

***NPDES PERMIT.*** Any permit or other document issued under the authority of and pursuant to the national pollutant discharge elimination system, being the Federal Water Pollution Control Act as now or hereafter amended.

***NATURAL OUTLET.*** Any outlet into a watercourse, pond, ditch, lake or other body of surface or groundwater.

***NORMAL DOMESTIC SEWERAGE.*** Wastes such as are normally discharged from individual residences and other housing units. Normal domestic sewerage shall not include any waste containing a loading in excess of 200 milligrams per liter B.O.D. and 250 mg/l suspended solids.

***pH.*** The logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

**PERSON.** Any individual, firm, company, association, society, corporation or group.

**PUBLIC SEWER.** A sewer in which all owners of abutting properties have equal rights, controlled by public authority.

**SANITARY BUILDING DRAIN.** That part of the lowest horizontal piping of the sanitary drainage system inside the walls of any building, which receives the discharge from soil or waste stacks and branches and conveys the same to a point three feet outside the building walls where it connects with its respective building sewer.

**SANITARY SEWER.** A sewer which carries sewage and to which storm, surface and groundwaters are not intentionally admitted.

**SEWAGE.** A combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, together with such ground, surface and storm waters as may be present.

**SEWAGE TREATMENT PLANT.** Any arrangement of devices and structures used for treating sewage.

**SEWAGE WORKS.** All facilities for collecting, pumping, treating, and disposing of sewage.

**SEWER.** A pipe or conduit for carrying sewage.

**SHALL** is mandatory; **MAY** is permissive.

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

**STORM DRAIN** (or **STORM SEWER**). A sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

**SUPERINTENDENT.** The Superintendent of the municipal sewage works of the town or his authorized deputy, agent or representative.

**SUSPENDED SOLIDS.** Solids that either float on the surface of or are in suspension in water, sewage, or other liquids, and which are removable by laboratory filtering.

**WATERCOURSE.** A channel in which a flow of water occurs, either continuously or intermittently.

#### **§ 40.34 OBLIGATION TO CONNECT TO SYSTEM.**

The owner of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes, situated within the town and abutting on any Street, alley or right-of-way in which there is now located a public sanitary or combined sewer of the town, is hereby required at his expense to install suitable toilet facilities therein, and to connect the facilities directly with the proper public sewer in accordance with the provisions of this chapter, within 90 days after the date of official notice to do so, provided that the public sewer is within 100 feet of the property line.

#### **§ 40.35 REGULATIONS FOR SEWER CONNECTION.**

(A) The slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the town. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the latest edition of the A.S.T.M. and S.P.C.F. Manual of Practice shall apply.

(B) Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.

(C) No person shall make connection of roof downspouts, exterior foundation drains, areaway drains or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

(D) The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the town, or the procedures set forth in appropriate specifications of the latest edition of the A.S.T.M. and the W.P.C.F. Manual of Practice. All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the Superintendent before installation.

(E) The applicant for the building sewer permit shall notify the Inspector when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the Inspector or his representative.

(F) 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 town.

#### **§ 40.36 PROHIBITED DISCHARGES INTO SANITARY SEWER.**

(A) No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water or unpolluted industrial process waters to any sanitary sewer.

(B) Stormwater and all 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, on approval of the Superintendent, to a storm sewer, combined sewer, or natural outlet.

(C) No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

(1) Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.

(2) Any waters or wastes containing toxic or poisonous solids, liquids, or gases 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.

(3) Any waters or wastes having pH lower than 5.5, or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the sewage works.

(4) Solid or viscous substances in quantities or of 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, mud, straw, rubber, shavings, metal, glass, rags, feathers, tar, plastics, wood, underground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, and the like, either whole or ground by garbage grinders.

(D) No person shall discharge or cause to be discharged the following described substances, materials, waters or wastes if it appears likely in the opinion of the Superintendent that such

wastes can harm either the sewers, sewage treatment process or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property, or 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 substances prohibited.

(1) Any liquid or vapor having a temperature higher than 150 degrees F (65 degrees C).

(2) Any water or waste containing fats, wax, grease, or oils, whether emulsified or not, in excess of 100 mg/l or containing substances which may solidify or become viscous at temperatures between 32 degrees and 150 degrees F (0 and 65 degrees C).

(3) Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths horsepower (0.76 hp metric) or greater shall be subject to the review and approval of the Superintendent.

(4) Any waters or wastes containing strong acid iron pickling wastes, or concentrated plating solutions, whether neutralized or not.

(5) Any waters or wastes containing iron, chromium, copper, zinc, 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.

(6) Any waters or wastes containing phenols or other taste or odor-producing substances, in such concentrations exceeding limits which may be established by the Superintendent as necessary, after treatment of the composite sewage, to meet the requirements of the state, federal or other public agencies of jurisdiction for such discharge to the receiving waters.

(7) Any radioactive wastes or isotopes of such halflife or concentration as may exceed limits established by the Superintendent in compliance with applicable state or federal regulations.

(8) Any waters or wastes having pH in excess of 9.5 or lower than 4.5.

(9) Materials which exert or cause:

(a) 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).

(b) Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions).

(c) Unusual B.O.D., chemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant loan on the sewage treatment works.

(d) Unusual volume of flow or concentration of wastes constituting “slugs” as defined herein.

(10) Waters or wastes containing substances which are not amenable to treatment or reduction by the sewerage treatment processes employer, 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.

#### **§ 40.37 ENFORCEMENT OF PROHIBITED DISCHARGES AND OTHER REGULATIONS.**

(A) If any waters or wastes are discharged, or are proposed to be discharged, to the public sewers, which waters contain the substances or possess the characteristics enumerated in § 40.46(D), 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 may:

(1) Reject the wastes;

(2) Require pretreatment to an acceptable condition for discharge to the public sewers;

(3) Require control over the quantities and rates of discharge; and/or

(4) Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of § 40.50. If the Superintendent permits the pretreatment or equalization of waste flows, 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.

(B) 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 cleaning and inspection.

(C) Where preliminary treatment or flow-equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.

(D) When required by the Superintendent, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances 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 the owner at his expense, and shall be maintained by him so as to be safe and accessible at all times.

(E) All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in this section shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, and shall be determined at the control manhole provided, 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. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb, and property. (The particular analyses involved will determine whether a 24 hour composite of all outfalls of a premise is appropriate or whether a grab sample or samples should be taken. Normally, but not always, B.O.D. and suspended solids analyses are obtained from 24 hour composites of all outfalls whereas pH s are determined from periodic grab samples.)

(F) No statement contained in this section shall be construed as preventing any special agreement or arrangement between the town and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the town for treatment, subject to payment therefore, by the industrial concern.

(G) 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 municipal sewage works. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct, or otherwise fined for violation hereof.

#### **§ 40.38 INSPECTION OF PRIVATE PROPERTIES BY THE BOARD.**

(A) The Superintendent, Inspector, and other duly authorized employees to the town bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing in accordance with the provisions of this chapter. The Superintendent or his representatives shall have no authority to inquire into any processes including 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.

(B) While performing the necessary work on private properties referred to in division (A) above, the Superintendent or duly authorized employees of the town shall observe all safety rules applicable to the premises established by the company. The company shall be held harmless for injury or death to the town's employees, and the town shall indemnify the company against loss or damage to its property by town 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 as required in § 40.46.

(C) The Superintendent and other duly authorized employees of the town bearing proper credentials and identification shall be permitted to enter all private properties through which the town holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the sewage works lying within the easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

#### **§ 40.39 SEWAGE WORKS BOND ORDINANCE AND INTEGRITY OF TRANSCRIPT OF PROCEEDINGS RELATING TO SEWAGE WORKS REVENUE BONDS, DATED NOVEMBER 1, 1975.**

While some ordinances or parts of ordinances contained in the Transcript of Proceedings Relating to Sewage Works Revenue Bonds, dated November 1, 1975 ("transcript"), as amended, have been incorporated in this code, and some parts of the transcript have been deleted herefrom, this code shall not be construed as repealing, altering or otherwise adversely affecting the provisions contained in the transcript relating to the issuance of the sewage works revenue bonds, and the integrity of such proceedings is hereby ratified and confirmed.

#### **§ 40.40 SEWAGE WORKS SERVICE RATES.**

(A) The town shall continually maintain in effect just and equitable rates or charges for the

use of and the service rendered by said works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses the sewage works by or through any part of the sewerage system of the town, or that in any way uses or is served by such works; that such rates or charges shall be sufficient in each year for the payment of the proper and reasonable expenses of operation, repair, replacement and maintenance of the works, and for the payment of the sums required to be paid into the Sewage Works Sinking Fund by this chapter and by Chapter 284 of the Acts of 1967. The rates or charges shall, if necessary, be changed and readjusted from time to time so that the revenues therefrom shall always be sufficient to meet the expenses of operation, repair and maintenance, and said requirements of the Sewage Works Sinking Fund. The rates or charges so established shall apply to any and all use of such works and service rendered to the town and all departments thereof as the charges accrue.

(B) Rates and charges in effect on the date of adoption of this code are shown in Appendix D, attached hereto and made a part hereof by reference.

#### **§ 40.41 BILLING PROCEDURES.**

Billing procedures for services rendered by the sewage works shall and are hereby established as follows:

(A) Billing for services rendered to a customer by the municipal sewage utility shall be rendered monthly to each customer, being mailed to the address of service or such other place as directed by the customer on the last day of each month.

(B) All bills shall be due and payable upon the first day of each month, and shall be delinquent the 15th day of the month following the date of mailing.

(C) If such billing shall not be paid in full on or before the 15th day of the month following the date of mailing, there shall be added to that portion of the billing which remains unpaid, a deferred payment or penalty charge equal to 10% of the remaining balance so unpaid.

#### **§ 40.42 GENERAL RULES FOR SALE OF SEWAGE UTILITY.**

The town shall sell sewage utility service to such persons, firms or corporations within its certified territory as may make appropriate application for such service, promptly pay all sewage utility bills when rendered, and otherwise comply with the rules and regulations as the Town Council may from time to time hereafter adopt, including but not limited to the following:

(A) Sewage utility connection service shall be made only upon request of the owner(s) of real property to be served and upon the terms and conditions hereinafter set forth.

(B) All owners of real property, prior to service connection or meter installation, shall execute a written request for service and make a meter deposit as otherwise provided by the existing rules and regulations of the utility.

(C) Upon acceptance of the service request and meter deposit by the utility, a contract for service shall exist between the land owner and utility, and the land owner shall be responsible for payment of all water service through that meter or to that property.

(D) Upon request by the property owner and occupier of the premises, an additional contract for service may be made with and billing may be rendered to the occupier of the property; however, this shall not relieve the property owner or the service deposit made from liability for service billing.

(E) The previous customers that have moved from the utilities service area, and who have a delinquent service billing, shall be required to remit the total amount of the delinquency and to make an additional deposit as elsewhere herein set forth when they return to the utilities area of service.

(F) The utility shall not render service to any applicant therefore who shall be indebted to the utility.

(G) This section shall not apply to service contracts in existence during or before February, 1999; however, this section shall apply to any and all persons, firms or corporations applying for a service connection after February, 1999.  
(Ord. 1999-2, passed 3-4-99)

## **§40.43 IMPROVEMENTS TO SEWERS**

**See attached Appendix E**

### ***PAYMENT FOR TRASH SERVICES***

## **TITLE V: TRAFFIC CODE**

### **Chapter**

**50. GENERAL PROVISIONS**  
**51. TRAFFIC REGULATIONS**  
**52. PARKING REGULATIONS**

**CHAPTER 50: GENERAL PROVISIONS**

Section

*General Provisions*

50.01 Definitions

*Traffic Control Devices*

50.20 Establishment and maintenance of traffic control devices

50.21 Obedience to signals

50.22 Interference with signals

50.23 Unauthorized signals or markings

*GENERAL PROVISIONS*

**§ 50.01 DEFINITIONS.**

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

*AUTHORIZED EMERGENCY VEHICLE.* The following vehicles:

- (1) Fire department vehicles;
- (2) Police department vehicles;
- (3) Ambulances;
- (4) Emergency vehicles operated by or for hospitals or health and hospital corporations under I.C. 16-22-8;
- (5) Vehicles designated as emergency vehicles by the state department of transportation under I.C. 9-21-20-1;

(6) Motor vehicles that, subject to I.C. 9-21-20-2, are approved by the state emergency medical services commission that are:

- (a) Ambulances that are owned by persons, firms, limited liability companies, or corporations other than hospitals; or
- (b) Not ambulances and that provide emergency medical services, including extrication and rescue services (as defined in I.C. 16-18-2-110); and

(7) Vehicles of the department of correction that, subject to I.C. 9-21-20-3, are:

- (a) Designated by the department of correction as emergency vehicles; and
- (b) Responding to an emergency.

**COMPLETE TURN.** To turn so as to proceed in the opposite direction.

**DRIVER.** A person who drives or is in actual physical control of a vehicle.

**HIGHWAY or STREET.** The entire width between the boundary lines of every publicly maintained way when any part of the way is open to the use of the public for purposes of vehicular travel. The term includes an alley.

**INTERSECTION.**

(1) The area embraced within:

(a) The prolongation or connection of the lateral curb lines, or if none, then the lateral boundary lines of the roadways of two highways that join at, or approximately at, right angles; or

(b) The area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(2) Where a highway includes two roadways at least 30 feet apart, every crossing of each roadway of the divided highway by an intersecting highway is regarded as a separate intersection. If the intersecting highway also includes two roadways at least 30 feet apart, every crossing of two roadways of the intersecting highway is regarded as a separate intersection.

**MOTOR VEHICLE.**

(1) Except as otherwise provided in this definition, a vehicle that is self-propelled. The term does **not include** a farm tractor or implement of husbandry, as those terms are defined in I.C. 9-13-2-56 and 9-13-2-77.

(2) **MOTOR VEHICLE** also means:

(a) A vehicle except a motorized bicycle that is self-propelled; or

(b) A vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

**MOTORCYCLE.** A motor vehicle with motive power having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground. The term does not include a farm tractor or a motorized bicycle.

**OPERATOR.** A person, other than a chauffeur or a public passenger chauffeur, who:

(1) Drives or is in actual physical control of a motor vehicle upon a highway; or

(2) Is exercising control over or steering a motor vehicle being towed by a motor vehicle.

**OWNER.**

(1) A person who holds the legal title of a motor vehicle;

(2) A person renting or leasing a motor vehicle and having exclusive use of the motor vehicle for more than 30 days; or

(3) If a motor vehicle is the subject of an agreement for the conditional sale or lease vested in the conditional vendee or lessee, or in the event the mortgagor, with the right of purchase upon the performance of the conditions stated in the agreement and with an immediate right of possession of a vehicle is entitled to possession, the conditional vendee or lessee or mortgagor.

**PARKING.** The standing of any vehicle, whether occupied or not, upon any street, alley, or public place other than temporarily for the purpose of and while actually engaged in loading or unloading, or in obedience to traffic regulations or traffic signs or signals.

**RIGHT OF WAY.** The privilege of the immediate use of a highway.

**ROADWAY.** That part of a highway improved, designed, or ordinarily used for vehicular travel.

**STREET.** See **HIGHWAY.**

**THROUGH HIGHWAY.** A highway or portion of a highway at the entrance to which vehicular traffic from intersecting highways is required by law to yield right of way to vehicles on the through highway in obedience to either a stop sign or a yield sign.

**VEHICLE.** A device in, upon, or by which a person or property is, or may be, transported or drawn upon a highway.

### ***TRAFFIC CONTROL DEVICES***

#### **§ 50.20 ESTABLISHMENT AND MAINTENANCE OF TRAFFIC CONTROL DEVICES.**

The town may establish and maintain official traffic control devices necessary within the town. All traffic control devices, including signs, shall be employed to indicate one particular warning or regulation, shall be uniform, and as far as possible shall be placed uniformly. All traffic-control devices and signs shall conform to required state specifications.

#### **§ 50.21 OBEDIENCE TO SIGNALS.**

(A) It shall be unlawful for the driver of any vehicle to disobey the signal of any official traffic control device placed in accordance with the provisions of this traffic code or of a traffic barrier or sign erected by any of the public departments or public utilities of the town, or any electric signal, gate, or watchman at railroad crossings, unless otherwise directed by a police officer. However, the type and the right to or necessity for such barrier or sign must be approved by the town.

(B) Such sign, signal, marking, or barrier shall have the same authority as the personal direction of a police officer.

#### **§ 50.22 INTERFERENCE WITH SIGNALS.**

It shall be unlawful for any person without authority to attempt to or in fact alter, deface, injure, knock down, or remove any official control device or any railroad sign or signal, or any inscription, shield, or insignia thereon, or any part thereof.

#### **§ 50.23 UNAUTHORIZED SIGNALS OR MARKINGS.**

(A) It shall be unlawful for any person to place, maintain, or display on or in view of any street any unauthorized sign, signal, marking, or device which purports to be or is an imitation of or resembles an official traffic device or railroad sign or signal which attempts or purports to direct the movement of traffic, or which conceals or hides from view or interferes with the effectiveness of any official control device or any railroad sign or signal. No person shall place or maintain, nor shall any public authority permit on any street, any traffic sign or signal containing any commercial advertising. Nothing in this section shall be construed as restricting any public department or public utility of the town in any emergency or temporarily from marking or erecting any traffic barrier or sign whose placing has been approved by the town.

(B) Every such prohibited sign, signal, or marking is declared to be a public nuisance and the town is empowered forthwith to remove it or cause it to be removed.

## **CHAPTER 51: TRAFFIC REGULATIONS**

### Section

#### *General Provisions*

- 51.01 Town speed limit
- 51.02 Trucks prohibited on certain streets
- 51.03 Stop intersections
- 51.04 One-way streets

#### *Cruising*

- 51.10 Definitions
- 51.11 Cruising prohibited
- 51.12 Posting of signs

### **GENERAL PROVISIONS**

#### **§ 51.01 TOWN SPEED LIMIT.**

No motor vehicle shall be propelled, operated or driven upon the streets in the corporate limits of the town at a speed greater than 30 m.p.h.

#### **§ 51.02 TRUCKS PROHIBITED ON CERTAIN STREETS.**

No trucks, other than pick-up trucks and passenger trucks and vans, shall be allowed to

operate on any posted town streets unless they must use the particular street in question for the purpose of local pick-up or delivery. Posted streets are those which have signs on them indicating that their use by through trucks is prohibited.

### **§ 51.03 STOP INTERSECTIONS.**

(A) The town may designate intersections as a stop intersection and require all vehicles to stop at one or more entrances to such intersections.

(B) The town shall post signs at such designated intersections, giving notice of the designation as a stop intersection.

(C) It shall be unlawful for any person to fail to obey the markings or signs posted under this section.

### **§ 51.04 ONE-WAY STREETS.**

(A) The town may designate streets or highways as one-way streets or highways, and require that all vehicles operated on the street or highway be moved in one specific direction.

(B) The town shall post signs at the entrance to such street or part of the street that is affected, giving notice of the designation as a one-way street.

(C) It shall be unlawful for any person to fail to obey the markings or signs posted under this section.

## ***CRUISING***

### **§ 51.10 DEFINITIONS.**

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

#### ***CONGESTED TRAFFIC.***

(1) Traffic on any public street, alley, or highway which is delaying to the point that:

(a) Motor vehicles cannot move through a 100-yard approach corridor to an intersection controlled by a traffic light within two complete green-light cycles where the delay in forward movement is due to the position of other motor vehicles;

(b) Motor vehicles cannot move through a 100-yard approach corridor to an intersection controlled by a traffic light, stop sign, or yield sign within a five-minute period of time where the delay in forward movement is due to the position of other motor vehicles; or,

(c) Motor vehicles cannot readily move forward on portions of public streets, alleys, or highways between intersections because traffic speed is slowed to less than five miles per hour, and the delay in movement is due to the position of other motor vehicles.

(2) The determination that a Street, alley, or highway is congested shall be made by the Town Marshal or ranking peace officer on duty within the affected area.

**CRUISING.** The repetitive driving of any motor vehicle past a traffic-control point in traffic which is congested at or near the traffic-control point.

**GREEN LIGHT CYCLE.** The period commencing upon the switching of a traffic light from a red light to a green light through to the return of a red light.

**PEACE OFFICER.** The Town Marshal, his or her designee, any member of the town Police Department, or other town, county or state official designated to enforce this subchapter.

**PROPERTY ON THE PROXIMITY OF ANY POSTED NO-CRUISING ZONE.** Any property which is both visible from and located within 300 feet of any portion of a street, alley, or highway which is posted as a No-Cruising Zone pursuant to this subchapter.

**TRAFFIC-CONTROL POINT.** A location along a public street, alley, or highway utilized by the Town Marshal or a peace officer on duty within the affected area as an observation point in order to monitor traffic conditions for potential violations of this title.

#### **§ 51.11 CRUISING PROHIBITED.**

(A) *Conduct prohibited.* It shall be unlawful to engage in the activity known as **CRUISING** as defined in this subchapter on the public streets, alleys, or highways of the town in any area which has been posted as a No-Cruising Zone.

(B) *First violation.* Any person who violates division (A) of this section may be given a written warning stating that any subsequent passage past that traffic-control point within the next succeeding four hours will be a violation of this subchapter.

(C) *Subsequent violations.* Any person who, after having received a written warning under

division (B) of this section, subsequently drives past or is a passenger in a vehicle passing the same traffic control point within the next succeeding four hours shall be in violation of this subchapter.

### **§ 51.12 POSTING OF SIGNS.**

This subchapter may be enforced in any area which has been posted as a “No-Cruising Zone.” “No Cruising” signs shall be posted at the beginning and the end of any public street, alley, or highway, or portion thereof, which is a “No-Cruising Zone.”

## **CHAPTER 52: PARKING REGULATIONS**

### Section

- 52.01 No parking where posted
- 52.02 Limited parking
- 52.03 Other parking restrictions
- 52.04 Parking for persons with physical disability
- 52.05 Parking along streets
- 52.06 Unregistered vehicles

### **§ 52.01 NO PARKING WHERE POSTED.**

No person shall stop, stand, or park a vehicle upon the public streets of the town at any place where official signs or where appropriate devices, marks, or painting, either upon the surface of the street or the curb immediately adjacent thereto, prohibit such acts.

### **§ 52.02 LIMITED PARKING.**

No person shall stop, stand, or park a vehicle upon the public streets of the town where official signs are erected limiting the parking time thereon, for a period of time in excess of the time as designated by the official signs.

### **§ 52.03 OTHER PARKING RESTRICTIONS.**

The Town Council may order the placing of signs, or devices, or marks, or the painting of streets or curbs prohibiting or restricting the stopping, standing, or parking of vehicles on any street where, in its opinion, the stopping, standing, or parking is dangerous to those using the highway, or where the stopping, standing, or parking of vehicles would unduly interfere with the free movement of traffic thereon. The signs, devices, marks, or painting shall be official Signs, devices, marks, or painting and no person shall stop, stand, or park any vehicle in violation of the

restrictions thereon or as indicated thereby.

#### **§ 52.04 PARKING FOR PERSONS WITH PHYSICAL DISABILITY.**

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

***PERSON WITH A PHYSICAL DISABILITY.*** Any person who has been issued a placard or special registration plate or decal for a motor vehicle by the State Bureau of Motor Vehicles under I.C. 9-14-5, 9-18-18, 9-18-22, or the laws of another state.

(B) *Parking prohibited.*

(1) It shall be unlawful for any person to park a motor vehicle, motorcycle, moped, bicycle, or other vehicle of any nature, which does not have displayed a placard for a person with a physical disability issued under the laws of this state or the laws of another state, in a parking space reserved for a vehicle of a person with a physical disability.

(2) It shall be unlawful for any person to knowingly park in a parking space reserved for a person with a physical disability while displaying a placard to which neither the person nor the person's passenger is entitled.

(C) *Violation.* If any vehicle is parked unlawfully in violation of any of the provisions of this section, and the identity of the driver cannot be determined, the owner or person in whose name the vehicle is registered shall be held, prima facie, responsible for the violation.

(D) *Towing.* In addition to any fines which may be given as a result of violations of this section, any vehicle which is parked in a manner in violation of this section may be towed to an area designated by the town at the owner's expense. The owner shall also be required to pay any and all storage fees resulting from this action.

#### **§52.05 PARKING ALONG STREETS.**

(A) *Alleys.* It shall be unlawful for any person to park or leave standing any vehicle, attended or unattended, upon the traveled portion of any public alley in the town, except for the purposes of loading or unloading the vehicle, and in such case not to exceed a period of 30 minutes.

(B) *Trucks.*

(1) It shall be unlawful for any firm, person or corporation to park a truck upon the

streets of the town that is rated a 2½ ton truck or over, except if the truck is being loaded with cargo or merchandise or unloaded.

(2) It shall be unlawful for any person, firm or corporation to park a truck rated ¾ ton or over, on the streets of the town from 6:00 a.m. to 6:00 p.m., for a period of over two hours. This shall not change or supersede any other sections of this code relative to the parking of trucks on certain selected streets of the town.

(3) No person, firm or corporation shall park a truck rated 34 ton or over upon the designated streets of the town from the hours of 6:00 p.m. to 6:00 p.m., except for periods not to exceed one hour, when the truck is being loaded, unloaded or is in the process of being repaired.

(4) No truck shall be parked and left unattended at any time within 20 feet of any intersection of the town.

(C) Parking is permitted in the parallel manner upon the streets of the town, provided the street shall be wide enough to reasonably permit two way traffic while vehicles are parked thereon.

(1) If the Board shall cause a no parking or limited parking sign to be erected upon a public street, the same shall be binding upon all persons of the town, and no person shall park a motor vehicle in the vicinity of indicated areas covered by a no parking or limited parking sign.

(2) Any no parking or limited parking sign erected by anyone other than the Board or upon direction thereof shall not have any binding effect.

(D) Parallel parking requirements. No vehicle shall be parked on a public way, except as herein prescribed. Vehicles shall be parked only upon the right side of the street as designated by the direction of travel of the vehicle in its parked position, the curb side wheels of the vehicle to be not more than 12 inches from the right hand curb.

## **§52.06 UNREGISTERED VEHICLES.**

No person shall leave upon any street or highway within the town limits a vehicle upon which there is not displayed the appropriate registration plate or certificate as required by Indiana law.

## **TITLE VI: GENERAL REGULATIONS**

### Chapter

- 60. ABANDONED VEHICLES
- 61. ANIMALS
- 62. NUISANCES
- 63. STREETS AND SIDEWALKS
- 64. RAILROAD CROSSING
- 65. FAIR HOUSING
- 66. USE OF TOWN PROPERTY
- 67. BURNING
- 68. PUBLIC INFRACTIONS
- 69. PUBLIC HEALTH

## CHAPTER 60: ABANDONED VEHICLES

### Section

- 60.01 Purpose
- 60.02 Definitions
- 60.03 Exceptions
- 60.04 Responsibility of owner
- 60.05 Vehicles in possession of person other than owner
- 60.06 Rental property
- 60.07 Removal of abandoned vehicles
- 60.08 Disposal of abandoned vehicles
- 60.09 Towing contracts
- 60.10 Liability for loss or damage

### § 60.01 PURPOSE.

The Town Council finds that abandoned vehicles are a public nuisance and a safety and health hazard.

### § 60.02 DEFINITIONS.

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

#### ***ABANDONED VEHICLE.***

- (1) A vehicle located on public property illegally;

- (2) A vehicle left on public property without being moved for three days;
- (3) A vehicle located on public property in such a manner as to constitute a hazard or obstruction to the movement of pedestrian or vehicle traffic on a public right-of-way;
- (4) A vehicle from which the engine, transmission, or differential has been removed or that is otherwise partially dismantled or inoperable and left on public property;
- (5) A vehicle that has remained on private property without the consent of the owner or person in control of that property for more than 48 hours;
- (6) A vehicle that has been removed by a towing service or the town upon request of an officer enforcing a statute or ordinance other than this chapter, if the impounded vehicle is not claimed or redeemed by the owner or the owner's agent within 20 days of the vehicle's removal; and
- (7) A vehicle that is at least three model years old, mechanically inoperable, and is left on private property continuously in a location visible from public property for more than 20 days.

**AUTOMOBILE SCRAPYARD.** A business organized for the purpose of scrap metal processing, automobile wrecking, or operating a junkyard.

**BUREAU.** The state Bureau of Motor Vehicles.

**FISCAL BODY.** The Town Council.

**OFFICER.** The Town Marshal, his or her designee, or a member of the Town Police Department.

**OWNER.** The last known record titleholder of a vehicle, according to the records of the State Bureau under I.C. 9-17.

**PARTS.** All components of a vehicle that, as assembled, do not constitute a complete vehicle.

**PRIVATE PROPERTY.** All property other than public property.

**PUBLIC PROPERTY.** A public right-of-way, street, highway, alley, park, or other state, county, or municipal property.

**TOWING SERVICE.** A business that engages in moving or removing disabled vehicles and, once removed, stores or impounds vehicles.

**VEHICLE.** An automobile, motorcycle, truck, trailer, semi-trailer, tractor, bus, school bus, recreational vehicle, or motorized bicycle.

### **§ 60.03 EXCEPTIONS.**

This chapter does not apply to:

(A) A vehicle in operable condition specifically adapted or constructed for operation on privately owned raceways;

(B) A vehicle stored as the property of a member of the armed forces of the United States who is on active duty assignment;

(C) A vehicle located on a vehicle sale lot or at a commercial vehicle servicing facility;

(D) A vehicle located upon property licensed or zoned as an automobile scrapyard; or

(E) A vehicle registered and licensed under I.C. 9-18-12 as an antique vehicle.

### **§ 60.04 RESPONSIBILITY OF OWNER.**

The person who owns an abandoned vehicle or parts is responsible for the abandonment and is liable for all of the costs incidental to the removal, storage, and disposal of the vehicle or the parts under this chapter.

### **§ 60.05 VEHICLES IN POSSESSION OF PERSON OTHER THAN OWNER.**

(A) When an officer discovers a vehicle in the possession of a person other than the person who owns the vehicle, and the person cannot establish the right to the possession of the vehicle, the vehicle shall be taken to and stored in a suitable place. The State Bureau of Motor Vehicles shall be notified within 72 hours of the location and description of the vehicle. Upon receipt of notification, the Bureau shall cause a search to be made to determine and notify the person who owns the vehicle.

(B) If the person who owns the vehicle cannot be determined by a search under § 60.08, the Bureau shall declare the vehicle abandoned and provide for its disposal in accordance with this chapter.

(C) 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. 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 operator shall notify the Bureau of all releases under this section.

(D) If the person who owns or holds a lien under division (C) of this section does not appear and pay all costs, the Bureau shall declare the vehicle abandoned and provide for disposal in accordance with this chapter.

### **§ 60.06 RENTAL PROPERTY.**

(A) A person who finds a vehicle believed to be abandoned on the person's rental property 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 the rental 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; and

(5) That the person who owns the vehicle may avoid costs by removal of the vehicle or parts within 72 hours.

(B) If, after 72 hours, the person who owns a vehicle believed to be abandoned on rental property has not removed the vehicle from the rental property, the person who owns the rental property may have the vehicle towed from the rental property. The towing operator shall do the following:

(1) Contact the Bureau of Motor Vehicles to obtain the name and address of the person who owns the vehicle; and

(2) Deliver, by certified mail, a copy of the information contained in the notice required under division (B) of this section to the person who owns of the vehicle. The notice required by this division (C)(2) must be given not later than five business days after the vehicle is removed.

(C) Notwithstanding division (B) of this section, in an emergency situation, a vehicle may be removed immediately. As used in this section, ***EMERGENCY SITUATION*** means that the presence of the abandoned vehicle interferes physically with the conduct of normal business operations of the owner of the rental property or poses a threat to the safety or security of persons or property, or both.

(D) A towing operator who tows a vehicle under division (C) of this section shall give notice to the town and Bureau of Motor Vehicles that the abandoned vehicle is in the possession of the towing operator.

### **§ 60.07 REMOVAL OF ABANDONED VEHICLES.**

(A) 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:

- (1) The date, time, officer's name, Town Police Department, and address and telephone number to contact for information;
- (2) That the vehicle or parts are considered abandoned;
- (3) That the vehicle or parts 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; and
- (5) That the person who owns the vehicle may avoid costs by removal of the vehicle or parts within 72 hours.

(B) If a vehicle or a part tagged under division (A) of this section is not removed within the 72-hour period, the officer shall prepare a written abandoned vehicle report of the vehicle or parts, including information on the condition, missing parts, and other facts that might substantiate the estimated market value of the vehicle or parts. Photographs shall be taken to describe the condition of the vehicle or parts.

(C) If, in the opinion of the officer, the market value of an abandoned vehicle or parts determined under division (B) of this section is less than \$500, the officer shall immediately dispose of the vehicle to an automobile scrapyard. A copy of the abandoned vehicle report and photographs relating to the abandoned vehicle shall be forwarded to the State Bureau of Motor Vehicles. The Police Department or Town Marshal shall retain the original records and photographs for at least two years.

(D) If, in the opinion of the officer, the market value of the abandoned vehicle or parts determined under division (B) of this section is at least \$500, 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 area.

(E) Upon 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 divisions (A) through (D) of this section.

### **§ 60.08 DISPOSAL OF ABANDONED VEHICLES.**

(A) (1) Within 72 hours after removal of an abandoned vehicle to a storage area under § 60.06 or 90.07, the Police Department, Town Marshal, or storage lot shall prepare and forward to the State Bureau of Motor Vehicles an abandoned vehicle report containing a description of the vehicle, including the following information:

- (a) The make;
- (b) The model;
- (c) The identification number; and
- (d) The number of the license plate.

(2) The town or storage lot shall request that the Bureau advise the town or storage lot of the name and most recent mailing address of the person who owns or holds a lien on the vehicle.

(B) The Bureau shall dispose of the vehicle in accordance with I.C. 9-22-1-19.

(C) The Bureau or town shall further advise the person who owns or holds a lien on the vehicle that all costs incurred in removing and storing the vehicle or parts are the person's legal responsibility.

### **§ 60.09 TOWING CONTRACTS.**

To facilitate the removal of abandoned vehicles or parts, the town may employ personnel; acquire equipment, property, and facilities; and enter into towing contracts for the removal,

storage, and disposition of abandoned vehicles and parts.

### **§ 60.10 LIABILITY FOR LOSS OR DAMAGE.**

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) The town;
- (C) A towing service; and
- (D) An automobile scrap yard.

## **CHAPTER 61: ANIMALS**

### *Section*

- 61.01 Definitions
- 61.02 Prohibited Acts
- 61.03 Vicious Animal
- 61.04 Impounding of Animal and Notice
- 61.05 Disposition of Impounded Animal
- 61.06 Redemption of Animal by Owner
- 61.07 Removal of Dead Animals
- 61.08 Fees; Penalties

### ***ANIMAL CONTROL***

### **§ 61.01 DEFINITIONS**

That certain words hereinafter used in this code, for the purposes hereof, are hereby defined when used in this chapter have the following meaning:

***ANIMAL.*** Any cow, sheep, swine, fowl, dog, cat or any other domesticated animal, including both the singular and plural thereof.

***ANIMAL POUND.*** Any building, pen, or other structure now or hereafter used for the purposes of collecting or impounding animals under the provisions of this chapter, whether located within or without the town.

**PERSON.** Any individual residing or owning property within the town, as well as any firm or corporation or group of individuals, firms or corporations within the town.

**STRAY ANIMAL.** Shall be construed to be any animal named herein, which shall be found within the town boundaries while it is not secured by being tied, chained, physically restrained or held by a human being, or maintained in an enclosure.

**TOWN MARSHAL.** The designated Marshal of the town, duly authorized and appointed Deputies, and any person, firm or corporation otherwise designated by contract or ordinance with the town to be empowered with the duties of the Town Marshal or Deputies for the specific purpose or purposes of enforcement of this code, including but not limited to the Animal Welfare League of Montgomery County.

## **§ 61.02 PROHIBITED ACTS**

It shall hereafter be prohibited and contrary to the code and the law of the town for any person to:

(A) Allow any animal to run at large within the town boundaries.

(B) Keep within the town boundaries any animal which by loud and frequent barking, howling, yelping, or other animal noise disturbs the peace and quiet of any neighborhood or annoys any citizen of the town.

(C) Allow or keep any animal which destroys, defaces or damages shrubbery, lawns, flowers, gardens or other personal or real property.

(D) Fail to confine any female animal in heat in a closed building so that such animal cannot come into contact with another animal except for planned and supervised breeding.

## **§ 61.03 VICIOUS ANIMAL**

Any animal which has bitten or attacked any person shall be considered vicious and shall be impounded for a period of 14 days or so long as the Board of Health shall otherwise determine. In lieu of impounding at the Animal Pound, the owner at his expense may provide for such animal to be delivered by the Town Marshal to a commercial kennel operated by licensed veterinarian for such period. After such period, the animal shall be released or disposed of as the Board of Health shall direct. No person shall keep or permit any vicious animal within the town limits unless the same is secured by a chain on his premises or muzzled to prevent it from biting. Any animal known to be vicious found running at large un-muzzled may be destroyed without

attempting to impound the same.

#### **§ 61.04 IMPOUNDING OF ANIMAL AND NOTICE**

The Town Marshal, upon having probable cause to believe that any person has allowed or caused an infraction of this code by doing or permitting one of the hereinbefore prohibited acts, and upon observing any animal in performance of any act prohibited by this code, shall immediately take possession of the animal and impound the animal in the Animal Pound. The Town Marshal shall thereafter secure the identity of the owner or possessor of such animal as soon as it can be done and serve a notice on such owner or possessor of said animal, setting out the nature of the violation of the code, describing the animal, the time and place where such violation occurred, and such other data as may be necessary for the owner to have an understanding of the circumstances of such violation. Notice may be served upon the owner by personal delivery to his place of residence or by Certified Mail. Such notice shall require the owner to appear at the Animal Pound of the town, or such other place as the town by posted notice shall hereafter require, within 48 hours after the service of such notice, and pay the fees or penalties hereinafter prescribed for such violation. In the event that such person fails to appear within the designated time and pay the prescribed fees or penalties, the Town Marshal shall proceed to enforce the code as otherwise hereinafter provided.

#### **§ 61.05 DISPOSITION OF IMPOUNDED ANIMAL**

After an animal has been impounded and held at the Animal Pound for five days, with no person having appeared to redeem said animal and pay the fees and penalties therefore, such animal shall be disposed of by the Town Marshal by sale or destruction in a humane manner. Notice shall be given to the owner or possessor of the animal and shall be required prior to sale or destruction. Sale shall be for such price and upon such terms as the Town Marshal deems convenient and expedient. Destruction of an animal shall be in such humane manner as may now or hereafter be ordered by the Board of Trustees of the town.

#### **§ 61.06 REDEMPTION OF ANIMAL BY OWNER.**

Any person whose animal has been impounded by the Town Marshal may redeem such animal by appearing at the Animal Pound and paying the fees and penalties incurred under the terms of this code by reason of such impoundment; however, no animal shall be released from the Animal Pound, unless the owner thereof shall present such proof that such animal has been immunized for rabies within the year immediately preceding such date. If such proof is not available, the person may advance the cost of immunization and any expense incidental thereto, and the Town Marshal shall secure such immunization, whereupon the animal shall be released to the person who is the owner thereof or otherwise entitled to the possession of said animal.

## **§ 61.07 REMOVAL OF DEAD ANIMALS**

Any person who becomes apprised of the death of any animal owned by him or in his possession within the town limits shall, within six hours thereafter, cause the same to be removed outside the limits of the town and buried or disposed of so as not to become a nuisance. When an animal killed by any person other than its owner or the person otherwise entitled to possession thereof, such animal shall be removed by the person causing the death thereof.

## **§ 61.08 FEES; PENALTIES**

(A) A fee or penalty shall be paid by the owner or person in control of any animal found to be in violation of this chapter as follows: for the first violation of this chapter, the applicable fine or penalty shall be \$25.00; for a subsequent violation within any twelve month period following a prior violation pertaining to the same animal the applicable fine or penalty shall be \$50.00.

(B) In addition to any fine or penalty herein provided, the owner of the animal shall be liable to pay such costs as are in effect for and by the animal impoundment facility to which the animal has been taken on impoundment.

(C) All fees or penalties payable hereunder shall be paid within 15 days following the impoundment of the animal and notification to the owner or other person entitled to possession of the animal. If such fees or penalties are not paid within such period, a collection fee of \$25.00 shall be added to all charges due. If the total of all charges due are not paid within 30 days following the impoundment of the animal and notification to the owner or other person entitled to possession of the animal, the town may pursue collection of such amounts through judicial proceedings, and in such event, the owner or other person entitled to possession of the animal shall be further liable for all court costs and attorney fees incurred by the town.

(D) No animal shall be retrieved from the impoundment facility or released to the owner or other person entitled to possession of the animal unless and until all fees, fines, and penalties due by reason hereof have been paid.

## **CHAPTER 62: NUISANCES**

### **Section**

#### **62.01 Public Nuisance**

### **§ 62.01 PUBLIC NUISANCES.**

(A) All owners of real estate in the Town shall be under a duty to remove or cause to be

abated any public nuisances as defined herein. The duty shall also extend to the parkway or other strip of ground lying between private property and the curb or paved portion of the street.

The Town Marshal, or other Town official who may be designated by the Town Council shall enter upon and inspect properties in the Town, and if real estate is found whereon such public nuisances exist, he shall serve notice in writing on the owner or such real estate requiring the owner to remove or abate such nuisances within five (5) calendar days after serving such notice. Service of the notice shall be made by personally delivering a copy of the notice to the premises and delivering the same to the owner thereof, or posting notice upon the entry way to the premises if the owner of the premises cannot be located or refuses to accept delivery of the notice, or by sending a copy of the notice by certified mail or other public means by which a written acknowledgment of the receipt may be requested and obtained from the addressee. Service shall be deemed to have been made as of the date of the posting of such mail or notice. The Town Marshal or other Town official shall report any failure to act to the Town Council. Such Town Council may thereupon, after review of the facts, order the appropriate department of the Town to enter upon such real estate and remove and abate such nuisance. Such department, after having performed such work, shall certify the actual cost of performing the same. The Town shall thereupon bill the owner for such work. If the owner fails or refuses to pay such charges within a reasonable time, the Town shall certify such charges to the appropriate county official to be taxed against such real estate and collected as other taxes were collected. The liability for the expense of removing or abating such nuisance shall be in addition to any penalty for violation of this action of the Town Code which may be imposed.

A nuisance is any act, place or condition which is offensive or dangerous to the public health, safety, peace, comfort, or response and includes but is not limited to accumulation of filth, decaying organic matter, stagnant water, a failure to cut, mow or otherwise eliminate weeds or rank vegetation on property within the Town, the existence on private property in close proximity to any municipal property or governmental right-of-way or easement which because of its location, size or condition interferes with the public safety or lawful use of such property, right-of-way or easement, the existence of any tree, shrub, vine or plant standing adjacent to any public street so as to obstruct thereby the division of travelers along such street, or dead, decayed broken or dangerous limbs overhanging or being close to a public way, the overhanging of any tree or other vegetation over the surface of a public way below a clear height of at least 8 feet, the failure to maintain a building or a premises in a clean, orderly or sanitary manner, failure to maintain any exterior property in a clear and sanitary condition free from any accumulation of rubbish or garbage, existence of any building or excessive structure which is structurally unsound or otherwise unsafe and dangerous to life, limb or property.

Whenever the Town Marshal, or any other Town official who may be designated by the Town Council, has reason to believe that a nuisance exists on any property in the town, he may

enter such property for the purposes of inspection for such a nuisance. If, upon such inspection, a nuisance is found, the inspecting officer shall notify the owner or occupant in writing to do whatever is necessary to abate the nuisance pursuant to the provisions and within the time provided by Section 2.

## **PENALTIES.**

### **A. Fines**

Any person, firm or corporation who violates any provision of this chapter shall, upon conviction thereof, be fined in an amount of \$100.00 and may be subject to other penalties provided in the Linden Town Code. A separate offense shall be deemed committed upon each day during which a violation occurs or continues after the time has passed for correction stated in the Notice of Noncompliance. Any person, firm or corporation adjudged responsible of violating any provision of this subchapter may also be adjudged to pay the costs of protection. In addition, the Town Council may;

- (1) Declare the premises to be unsafe;
- (2) Issue an emergency order where immediate action is required to protect the health and safety of the public or of the occupants of the premises; and
- (3) Seek any of the additional relevant remedies provided by state law or local ordinance.

### **B. Failure of Owner or Occupant to Correct Noncompliance: Costs of Removal**

In the event of the owner or occupant of the premises fails to correct the public nuisance condition of the premises as specified in the notice of noncompliance within the time required by Section 2, the Town Council may proceed to correct the condition and shall keep an account of all costs incurred in correction of the public nuisance condition. The Clerk-Treasurer shall may a certified statement of all costs incurred by the Town involved in correcting the public nuisance condition including attorney fees, to be issued immediately to the owner or occupant of the premises in the same manner as provided for issuance of the nuisance condition including attorney fees, to be issued immediately to the owner or occupant of the premises in the same manner as provided for issuance of the notice of violation by this subchapter. The owner or occupant shall pay the amount of all costs incurred by the city as noted on the certified statement to the Clerk-Treasurer within 30 days from the date certified statement is served upon the

owner or occupants.

**(1) Lien: Delinquent Accounts**

(a) All costs by the Town to correct a public nuisance as provided in this subchapter, shall be and the same is hereby declared a lien in favor of the Town of Linden upon and against the premises on which the corrective activity is undertaken. All costs, together with any penalty applicable thereto as provided by this Chapter, shall be collected in any manner provided. The lien herein created is superior to and takes precedence over all other liens except for the lien for taxes.

(b) In the event the full amount due the Town is not paid to the Clerk-Treasurer by the owner of the premises within 30 days after receipt of the certified statement expenses as provided herein, the costs shall thereupon become and is hereby declared to be delinquent and a penalty of 25% of such cost shall thereupon attach to the cost and be included in the lien, as herein provided, and shall be collectible in addition to the cost of such removal and disposal.

(c) In the event a delinquency occurs for nonpayment of the costs set out in the certified statement, the Clerk-Treasurer shall record in the office of the County Recorder a notice of lien setting forth the name or names of the owner of the premises upon which the costs have become delinquent, the description of the premises as shown by the records of the County Auditor and the amount of such delinquent costs and the penalty thereon. The lien shall attach to the premises described in the notice of lien from the recording of the notice of the lien.

**(1) Civil Action: Foreclosure for Nonpayment**

(a) If the costs incurred by the Town for the correction of the public nuisance are not paid to the Town as herein provided and become delinquent, then the amount due the Town for such corrective action, the penalty thereon and all costs of collection thereof, including a reasonable attorney's fee, may be recovered by the Town in a civil action brought in the name of the Town against the owner of the premises responsible for payment thereof.

(b) If the costs incurred by the Town for the correction of a public nuisance is not paid to the Town as herein provided and becomes delinquent, the Town, as an additional or alternative remedy, may foreclose the line created by this subchapter as a means of collection the amount due the Town for sale of the premises be made without relief from valuation and appraisal laws.

(c) In the event the costs incurred by the Town for nuisance correction is not paid to the Town as herein provided and becomes delinquent, the Town, as a further additional or alternative remedy may authorize the Clerk-Treasurer to certify to the County Auditor a true copy of the notice of lien and the amount of delinquent costs and any penalty thereon which shall then be charged to the premises on the tax duplicate and shall be collected in a manner that taxes are collected by law. Upon collection of the costs and penalty thereon, the County Auditor or any other appropriate official shall pay to the Clerk-Treasurer the total amount of the costs so collected together with the penalty thereon.

### **C. OTHER LEGAL REMEDIES**

In addition to the enforcement remedies provided by this subchapter, the Town may enforce the provisions of this subchapter, by all other legal remedies, including but not limited to, the use of a mandatory injunction to required abatement of any public nuisances within the Town by the owner or occupant of the affected premises. In all such actions brought by the Town to enforce the provisions of this subchapter, the Town is entitled to recover all cost of such litigation, including a reasonable attorneys fee.

### **D. TRANSFER OF OWNERSHIP**

It shall be unlawful for the owner of any premises who has received a notice of violation of this subchapter to sell, transfer, mortgage, lease or otherwise dispose of the premises to another until the provisions of the notice of violation have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee, or lessee a true copy of any notice of violation and shall furnish the Town a signed and notarized statement from the grantee, transferee, mortgagee, or lessee acknowledging the receipt of such notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by the notice of violation.

### **E. OTHER ACTS CONSTITUTING NUISANCE**

The following shall also constitute a nuisance as prohibited by this ordinance:

- (1) Whenever premises shall not be graded and maintained so as to prevent the accumulation of stagnant water thereon, or within any building or structure located thereon.
- (2) Whenever buildings shall not be kept free from insect and rodent infestation. Where insects and rodents are found, they shall be promptly exterminated by acceptable processes which will not be injurious to human health. After

extermination, proper precautions shall be taken to prevent infestation.

(3) Whenever any property is abandoned, neglected, or disregarded so as to permit the same to cluttered with an accumulation of litter or waste including but not limited to waste paper, rags, cans, bottles, boxes, lumber, metal, garbage, trash, disused or inoperable vehicles, trailers, machinery, appliances, or furniture thereon, unless specifically authorized by law.

(4) Whenever any storage of manure odor or dust producing materials of any kind is allowed to occur within 50 feet of any adjoining lot line.

(5) Whenever any animal other than a household pet is kept within the Town limits, provided, however:

- (a) The term “household pet” as used in this chapter shall not include ducks, chickens, rabbits, goats, sheep, swine or other animals not customarily kept as family pets.
- (b) One horse or pony may be kept within a private stable if such lot or tract contains at least two acres and one additional horse or pony may be kept for each additional one-half acre.
- (c) Customary farm animals may be kept on a non commercial basis when adequately housed and fenced on a parcel of land not less than 10,000 square feet in area.
- (d) Any area now within the corporate limits or hereafter annexed which is not used as part of a farming operation, saddle club, veterinarian, sale barn, 4-H or fairground, and associated activities may contain such usage.

(6) Whenever stables and buildings housing other farm animals are located closer than 100 feet of any lot line.

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed. This Ordinance shall be in full force and effect from and after the date of its passage and publication as required by law.

## **CHAPTER 63: STREETS AND SIDEWALKS**

### Section

#### *Excavations and Construction*

- 63.01 Opening permit required
- 63.02 Application and cash deposit
- 63.03 Restoration of pavement
- 63.04 Barriers around excavations
- 63.05 Warning lights
- 63.06 Sidewalk construction

*Obstructions*

- 63.10 Unloading on street or sidewalk
- 63.11 Street and sidewalk obstruction
- 63.12 Materials on street or sidewalk
- 63.13 Sidewalk snow removal
- 63.14 Burning of rubbish
- 63.15 Littering
- 63.16 Regulation of digging and trenching
- 63.17 Declaration of Policy – Trees and bushes in public ways
- 63.18 Trees overhanging public ways
- 63.19 Alteration of streets
- 63.20 Restriction on use of streets – inclement weather
- 63.21 Parking on Main Street
- 63.22 Parking prohibited or limited
- 63.23 General street regulations
- 63.24 Vehicle parking – alleys
- 63.25 Parking trucks
- 63.26 Hindering access to a fire hydrant
- 63.27 Failure to display street address to the exterior of a building with 30 days notification thereof

***EXCAVATIONS AND CONSTRUCTION***

**§ 63.01 OPENING PERMIT REQUIRED.**

It shall be unlawful for any person, other than an authorized town official, to make any opening in any street, alley, sidewalk, or public way of the town unless a permit to make the opening has been obtained prior to commencement of the work.

**§ 63.02 APPLICATION AND CASH DEPOSIT.**

Each permit for making an opening shall be confined to a single project and shall be issued

by the authorized town official. Application shall be made on a form prescribed by the Town Council, giving the exact location of the proposed opening, the kind of paving, the area and depth to be excavated, and such other facts as may be provided for. The permit shall be issued only after a cash deposit sufficient to cover the cost of restoration has been posted with the authorized town official, conditioned upon prompt and satisfactory refilling of excavations and restoration of all surfaces disturbed.

### **§ 63.03 RESTORATION OF PAVEMENT.**

(A) The opening and restoration of a pavement or other surface shall be performed under the direction and to the satisfaction of the authorized town official, and in accordance with rules, regulations, and specifications approved by the Town Council.

(B) Upon failure or refusal of the permittee satisfactorily to fill the excavation, restore the surface, and remove all excess materials within the time specified in the permit or where not specified therein, within a reasonable time after commencement of the work, the town may proceed without notice to make such fill and restoration and the deposit referred to in § 63.02 shall be forfeited. Thereupon the deposit shall be paid into the appropriate town fund, except such part demanded and paid to the permittee as the difference between the deposit and the charges of the town for restoration services performed by it. If the amount of such services performed by the town should exceed the amount of the deposit, the Clerk or other proper administrative officer shall proceed to collect the remainder due from the permittee.

### **§ 63.04 BARRIERS AROUND EXCAVATIONS.**

Any person engaged in or employing others in excavating or opening any street, sidewalk, alley, or other public way shall have the excavation or opening fully barricaded at all times to prevent injury to persons or animals.

### **§ 63.05 WARNING LIGHTS.**

Any person engaged in or employing others in excavating or otherwise in any manner obstructing a portion or all of any street, sidewalk, alley, or other public way, at all times during the night season shall install and maintain at least two illuminated red lamps which shall be securely and conspicuously posted on, at, or near each end of the obstruction or excavation, and if the space involved exceeds 50 feet in extent, at least one additional lamp for each added 50 feet or portion thereof excavated or obstructed.

### **§ 63.06 SIDEWALK CONSTRUCTION.**

It shall be the duty of the authorized town official to supervise construction or repair of sidewalks within the town. He shall cause specifications to be prepared for the construction of the various kinds of pavements and transmit the specifications to the Town Council for approval. When the specifications are approved, the Town Council shall advertise for proposals to do all the work which may be ordered by the town in construction and repair of sidewalks, and shall authorize the Mayor to contract therefore, for a period not exceeding one year, with the lowest responsible bidder, who shall for the faithful performance of the work. The Mayor, if authorized by Town Council, may make separate contracts for the different kinds of work with different parties.

### ***OBSTRUCTIONS***

#### **§ 63.10 UNLOADING ON STREET OR SIDEWALK.**

No person shall unload any heavy material in the streets of the town by throwing or letting the material fall upon the pavement of any street, alley, sidewalk, or other public way, without first placing some sufficient protection over the pavement.

#### **§ 63.11 STREET AND SIDEWALK OBSTRUCTION.**

No person shall obstruct any street, alley, sidewalk, or other public way within the town by erecting thereon any fence or building, or permitting any fence or building to remain thereon. Each day that any fence or building is permitted to remain upon the public way shall constitute a separate offense.

#### **§ 63.12 MATERIALS ON STREET OR SIDEWALK.**

No person shall encumber any Street or sidewalk. No owner, occupant, or person having the care of any building or lot of land, bordering on any street or sidewalk, shall permit it to be encumbered with barrels, boxes, cans, articles, or substances of any kind, so as to interfere with the free and unobstructed use thereof.

#### **§ 63.13 SIDEWALK SNOW REMOVAL.**

It is hereby declared to be the duty of the owner or occupants of property adjacent to sidewalks to remove snow from such sidewalks within 24 hours after the snow ceases falling.

#### **§ 63.14 BURNING OF RUBBISH.**

It is hereby declared to be unlawful for any person, firm or corporation to burn or cause to be burned any leaves, rubbish, garbage or weeds upon any bituminous street in the town.

### **§ 63.15 LITTERING.**

It is hereby declared to be unlawful for any person, firm or corporation to deposit on any Street, alley, sidewalk or public place within the town, any boxes, barrels, lumber, logs, wood, ashes, boards, brick material or rubbish of any kind and to leave the same exposed and obstruct any public place; provided however, that this chapter shall not apply to the necessary placing of building material for the construction of buildings in any street in front of any building under construction, or for the placing in the street in front of buildings lumber and materials where the same are being torn down, for and during the time necessary to build or to tear down the buildings. Any person, firm or corporation that violates any of the provisions of this section shall be subject to payment of a fine to the town in any sum not exceeding the maximum permitted by law.

### **§ 63.16 REGULATION OF DIGGING AND TRENCHING.**

(A) It is hereby declared to be unlawful for any person, firm or corporation, except persons engaged in the repair of the streets, alleys and public places of the town under the supervision of the Town Marshal or other proper authorities thereof, to dig or cause to be dug any trench or hole or make any excavation of any kind, or plant any pole along, over or upon any of the streets, alleys or public places within the town, or cause such work to be done for the purpose of tapping any gas or water mains, or erecting or putting any system of telephones, or doing work which requires digging or excavating in said streets, without first having obtained from the Town Clerk a permit to dig such trench or hole, or to make such excavation, which permit shall correctly describe the kind of work and the location thereof. The person or persons to whom such permit may be granted will be required to see that the streets, alleys and public places where excavations are made, are placed in as good repair as they were before the work was commenced and are restored to former condition and original grade.

(B) If such persons making excavations or digging holes or trenches of any kind shall fail or refuse to repair such street, alley or other public place where such excavations have been made, the Town Marshal shall report the same to the Board of Trustees who shall order the Marshal to repair the same, and present the bill therefore to the person, firm or corporation making such excavation, or digging such holes or trenches, and if payment therefore be refused, suit may be brought by the Board of Trustees against such party in any court of competent jurisdiction for the collection of the expense of the repairs, expenses of suit including attorney fees, actual damages that may have been incurred by the town, and a penalty not exceeding the statutory limit permitted.

### **§63.17 DECLARATION OF POLICY – TREES AND BUSHES IN PUBLIC WAYS**

That all trees and bushes of every kind and character growing upon any street or alleyway in the Town of Linden shall be under the care and supervision of the Board of Trustees of said Town. Said Board shall have the right to remove, cut, or trim any such trees, whenever, in their judgment, it is necessary, for any cause whatsoever. The Town Marshal shall execute and carry out the orders of the Town Board with reference to the cutting down or trimming or removing of all trees and bushes.

### **§63.18 TREES OVERHANGING PUBLIC WAYS**

The Town Marshal, at the direction of the Town Board, shall have the right to enter upon any private property for the purpose of cutting down, trimming, or removing any trees or bushes of any kind or character situated upon private property, when any portion of such trees or bushes overhang a street or alleyway, or whenever, in the opinion of the Board of Trustees of said Town, said tree or trees, or bushes are in an unsafe or rotten condition, or whenever said tree or trees, or bushes are unsightly or located in such a place or position as to be unsightly, or when the-same unnecessarily obstructs the general view of the public;

### **§63.19 ALTERATION OF STREETS**

It shall be unlawful for any person, firm or corporation to build up the side of any street higher than the edge of such street or to break up any sidewalk, curb or gutter, or to change the grade, alignment or course thereof without first obtaining a written permit to do so, from the Board of Trustees of the Town.

### **§63.20 RESTRICTION ON USE OF STREETS – INCLEMENT WEATHER**

It shall be unlawful for any person, firm or corporation to drive, pull or in any manner propel any vehicle upon, over or across any street or alley in the Town of Linden during or after any heavy rains or other damaging weather to the said streets of the Town, whose total gross weight with load is over weight in pounds, and also when such travel or use of such streets and alleys is prohibited or restricted and marked with appropriate signs or placards.

### **§63.21 PARKING ON MAIN STREET**

All vehicles shall be parked parallel to the curb on both sides of Main Street in said Town.

### **§63.22 PARKING PROHIBITED OR LIMITED**

There shall be no parking of any vehicles within fifteen (15) feet of the intersection of the curb lines at the intersection of Main Street and Walnut Street in said Town, and at the intersection of

Main Street and Plum Street, in said Town. Also, there shall be no parking on the north side of Water Street from High Street to the east boundary of the Linden School grounds between the hours of 8:00 a.m. and 4:00 p.m. during the school term.

### **§63.23 GENERAL STREET REGULATIONS**

a . There shall be no complete turns or u turns by vehicles at the intersection of Main Street and Walnut Street in said Town.

b. There shall be no complete turns or u turns by vehicles at the intersection of Main Street and Plum Street in said Town.

c. At street intersections, where signal lights are installed, no vehicle shall enter into or cross such intersection when the red light is against traffic in the direction in which such vehicle is moving.

d. When a vehicle shall enter into or cross an intersection where a signal light is installed, such vehicle shall at all times keep to the right of said signal light.

e. There shall be no parking upon any of the cross sidewalks, and no parking in front of the entrance to any alley.

f. It shall be unlawful for any person to refuse or fail to comply with any lawful order, signal, or direction of the Town Marshal.

### **§63.24 VEHICLE PARKING – ALLEYS**

It shall be unlawful for any person to park, or leave standing any vehicle, attended or unattended, upon the travelled portion of any public alley in the Town of Linden, Indiana.

This section shall not apply to the driver of any vehicle which is disabled, or in the process of loading or unloading, for so long, and to such extent that it is impossible to avoid stopping and temporarily leaving a disabled vehicle, or where it is necessary in the regular course of one's business to load or unload personal property, and temporarily parking in an alley, for so long as is necessary to accomplish such loading or unloading.

### **§63.25 PARKING TRUCKS**

a. It shall be unlawful for any firm, person or corporation to park a truck upon the streets of Linden, that is rated a 2 ½ - ton truck or over, except if such truck is being loaded or unloaded, with cargo, or merchandise.

b. It shall be unlawful for any person, firm or corporation to park a truck rated one (1) ton or over, on the said streets designated of the Town of Linden from 6:00 a.m. to 6:00 p.m., for a period of over two hours. This shall not change or supersede any other sections of the Code relative to the parking of trucks on certain selected streets of the Town.

It is further declared that no person, firm or corporation shall park a truck rated one (1) ton or over upon the said designated streets of the Town of Linden, from the hours of 6:00 p.m., in the evening to 6:00 a.m., except for periods of not to exceed one hour, when said truck is being loaded, unloaded or in the process of being repaired.

c. It is further declared that no truck shall be, parked, and left unattended at any time, within twenty (20) feet of any intersection of the Town.

### **§63.26 HINDERING ACCESS TO A FIRE HYDRANT**

It shall be unlawful for any firm, person or corporation to park a vehicle upon a city street for any period of time in a place that hinders access to a fire hydrant placed along the side of that city street.

### **§63.27 FAILURE TO DISPLAY STREET ADDRESS TO THE EXTERIOR OF A BUILDING WITH 30 DAYS OF NOTIFICATION THEREOF**

It shall be unlawful to fail to display a street address to the exterior of a building after having been notified of the requirement for 30 days.

## **CHAPTER 64: RAILROAD CROSSINGS**

### *Section*

- 64.01 Crossing Signals
- 64.02 Duration of signal
- 64.03 Duration of blocked crossing
- 64.04 Speed limit

### ***RAILROAD CROSSING SIGNALS***

#### **§ 64.01 CROSSING SIGNALS.**

It shall be unlawful for any railroad company to operate and maintain any bell or other noise-making device as a warning signal at Street crossings, alley-ways, or at any other place in

the town that will ring or create a sound for a longer period of time than one minute preceding the approach of a train or engine and while the train or engine is actually moving past, and an additional one minute after the train or engine has passed said bell or signal.

#### **§ 64.02 DURATION OF SIGNAL.**

It shall be unlawful for any railroad company to operate its trains or engines, or to permit its trains or engines, or any portion thereof, to remain standing on its tracks so that as a result the signal is sounded continuously for more than five minutes at any one time.

#### **§ 64.03 DURATION OF BLOCKED CROSSING.**

It shall hereafter be unlawful for the engineer or conductor, or any person having charge of any railroad locomotive or train to permit or suffer any locomotive or train of cars used for carrying freight to remain standing across any public highway, street, or alley for a period longer than two minutes without immediately cutting the train and leaving a space of at least the entire width of the street or alley unoccupied by such train of cars or locomotive.

#### **§ 64.04 SPEED LIMIT.**

It shall be unlawful for any person to drive and operate a train through the town at a speed greater than 30 m.p.h.

### **CHAPTER 65: FAIR HOUSING**

**See attached Appendix F**

### **CHAPTER 66 USE OF TOWN PROPERTY**

#### *Sections*

66.01 Rules regarding town properties

#### **§66.01 Rules regarding Town properties**

**THE FOLLOWING RULES ARE HEREBY ADOPTED FOR USE OF ALL PARKS AND TOWN OWNED PROPERTIES:**

- (a) Park and all Town owned properties are closed from 9PM to 5AM.
- (b) Vehicles must stay on paved or stone surfaces.

- (c) No alcoholic beverages, firearms or dangerous weapons allowed.
- (d) No roller skates, skateboards or bicycles in shelter or on Basketball court.
- (e) No ATV - dirt bikes, go-carts or snowmobiles.
- (f) Noise level's not to disturb the peace.
- (g) Put all trash in receptacles or take with you.
- (h) No personal fireworks or open fires.
- (i) Do not move picnic tables from shelter.
- (j) No misuse of Town owned property or structures.
- (k) The use of Tobacco products at all parks and ball-fields is prohibited.

Penalty.

Any person found to be in violation of this Ordinance shall be fined as follows:

1. \$50.00 for each occurrence

## **CHAPTER 67 BURNING**

### *Sections*

- 67.01 Prohibition
- 67.02 Burning wood and paper
- 67.03 Burning leaves

### **§ 67.01 PROHIBITION.**

Except as herein expressly provided, it is hereby prohibited to burn or cause to be burned within the limits of the town any trash, rubbish, garbage, waste materials, clothing or any other type of personal property.

### **§ 67.02 BURNING WOOD AND PAPER.**

It is hereby declared lawful to burn wood or paper, but only under and upon the following

conditions:

(A) All materials, during the burning process, shall be in a solid walled metal or masonry container or structure.

(B) Burning shall be conducted only between the hours of daylight and dusk.

(C) No fire shall be left unattended, and all embers shall be extinguished with sand, water or other suitable method, to ensure the fire is out when abandoned.

### **§ 67.03 BURNING LEAVES.**

It shall be lawful to burn leaves, but only under and upon the following terms and conditions:

(A) Such burning shall be conducted only between the dates of October 1 and December 15 of each year.

(B) Such burning shall take place only between daylight and dusk.

(C) While the burning of leaves need not be conducted by the use of a container, as is required for paper and wood, it must be done in such a manner as to contain all flames on the private premises of the party conducting or authorizing such burning.

(D) It shall be unlawful to conduct any such burning on any public way or town-owned property within the town.

(E) No such fire shall be left unattended at any time, and the fire, flames and embers shall be fully extinguished prior to the abandonment of such burning.

## **CHAPTER 68 PUBLIC INFRACTIONS**

### *Sections*

- 68.01 Disturbing the peace
- 68.02 Use of sidewalks
- 68.03 Discharge of weapons
- 68.04 Air rifles
- 68.05 Wells and Cisterns
- 68.06 Fireworks
- 68.07 Littering

### **§ 68.01 DISTURBING THE PEACE.**

No person shall disturb the peace of the town, or of its inhabitants, by any loud or unusual noise, fighting between persons, challenging any person to fight, throwing, tossing or launching any missile or using the public ways of the town in such a manner as to unduly restrict or curtail the natural use thereof by others.

### **§ 68.02 USE OF SIDEWALKS.**

No person shall use the sidewalks of the town for any purposes other than walking or running thereon, propelling a grocery cart, baby carriage or similar vehicle, and riding a tricycle. All persons are specifically prohibited from using the sidewalks of the town for the purposes of riding bicycles, motorized vehicles, skateboards, roller skates, scooters and similar vehicles.

### **§ 68.03 DISCHARGE OF WEAPONS.**

No person shall discharge a gun of any type within the town limits without the express written consent of the police department.

### **§ 68.04 AIR RIFLES.**

No person shall shoot or discharge an air rifle or bb gun within the town limits.

### **§ 68.05 WELLS AND CISTERNS.**

No person shall have, permit or maintain on any premises in the town owned by or under the control of such person any well, cistern, privy, caught, abandoned well or cistern, unless the same is securely and safely covered so as to prevent any person or animal from falling therein.

### **§ 68.06 FIREWORKS.**

(A) The discharge, firing or use of all firecrackers, rockets, torpedoes, roman candles, or other fireworks or substances designed and intended for pyrotechnic display, and all pistols, canes, cannons, or other explosives, is hereby prohibited within the corporate limits of the town.

(B) The sale of fireworks at retail is prohibited within the town.

(C) The storage or sale of fireworks at wholesale is prohibited within the town.

(D) The Town Marshal may, at his discretion, remove or have removed at the owners

expense, all stocks of fireworks or other combustibles exposed for sale or held in stock in violation of this section.

#### **§ 68.07 LITTERING.**

It shall be unlawful for any person or persons, company or corporation, to throw or deposit, or suffer to be thrown or deposited, or suffer or permit any child, servant, member of the family, or any other person under his, her, or their control, to throw or deposit any manure, rubbish, slops, putrid or unsound animal or vegetable matter, or any filthy, noisome, or unwholesome liquid or slops or substances that are liable to become unwholesome, in, into or upon any street, lane, alley, sidewalk, gutter, crossing, lot, cellar, premises or common, and it shall also be unlawful for any rank weeds to be allowed to grow within the town. And it shall be unlawful and a nuisance, for any overflowing vault or non-fly-proof privy to exist.

### **CHAPTER 69 PUBLIC HEALTH**

#### *Sections*

69.01 Sanitary survey

69.02 Public health

69.03 Collection and disposal of litter or refuse

69.04 Maintenance of clearways, areaways, and stairways

69.05 Payment for trash services

#### **§ 69.01 SANITARY SURVEY.**

The Health Officer and the Marshal shall have full power and authority to enter into or upon any street, lot, alley, premises, or ground, for the purpose of making a sanitary survey of the same, and if a nuisance or any unsanitary conditions are found, it shall be the duty of the Health Officer, when informed of the existence of the same, to immediately notify the person or persons so offending in writing, fixing a time limit to abate the nuisance. If such person shall fail or refuse to abate the nuisance within the time specified, it shall be the duty of the Marshal, upon notice of the Health Officer, to cause the same to be abated, keeping an accurate account of the expense thereof, which shall be paid from the town treasury upon the sworn voucher of the Marshal, and said expenses shall be a lien on the property, and collected as taxes are collected and turned into the town treasury.

#### **§ 69.02 PUBLIC HEALTH**

The Health Officer shall be diligent in enforcing this chapter and in doing what is

reasonable and necessary for the protection and preservation of the public health, and he shall make a monthly report to the Town Board to all health work done with such recommendations as may seem proper to him.

### **§ 69.03 COLLECTION AND DISPOSING OF LITTER OR REFUSE.**

(A) It shall be unlawful for any person, firm or corporation to load or unload, or handle in any way, hay, straw, coal, lumber, or any other material of any kind or character in such a manner or fashion so as to create or leave refuse or litter that looks unsightly, or which might be blown upon the property of others or into the public places in the town.

(B) It is hereby declared to be the duty of any person, firm or corporation creating any refuse or litter in any manner whatsoever inside the corporate limits of the town that, if left, would appear unsightly, or likely to be blown upon private property of others, or upon any of the public streets or alleyways of said town, to immediately remove it, so as to prevent the same being unsightly or blowing upon the property of others or upon the public property of said town.

(C) The provisions of this chapter shall also apply to any person, firm, or corporation who shall permit refuse or litter or other material to be blown from outside the corporate limits of the town into and upon any of the property located in the town.

### **§ 69.04 MAINTENANCE OF CLEARWAYS, AREAWAYS AND STAIRWAYS.**

It shall be unlawful for any property owner to occupy for clearways, areaways, and stairways a space exceeding three feet in width of the sidewalk next to the building against which said sidewalks are placed in any part of the business portion of the town, and where the sidewalks are of a width of eight feet or more, clearways, areaways, and stairways shall be properly protected by suitable iron railings, iron fence, or other sufficient barrier, on each side of such stairways by the person so erecting them, to prevent accidents to persons by falling into or running against the same.

### **§69.05 PAYMENT FOR TRASH SERVICES**

The Town Council of the Town of Linden, Montgomery County hereby authorizes a Payment in Lieu of Tax (PILT) to be paid from each Town utility to the Town=s Trash fund in the annual amount of \$1,336.00 from each Town utility. If the PILT payment is made in one annual installment it shall be due and payable on January first of each year and if the annual amount due is paid in monthly installments it will be paid in amounts that equal one-twelfth of the annual amount due on the first day of each month.

## **TITLE VII: BUSINESS REGULATIONS**

Chapter

- 70. GENERAL LICENSING PROVISIONS**
- 71. PEDDLERS AND SOLICITORS**
- 72. BUSINESS REGULATIONS**

## **CHAPTER 70: GENERAL LICENSING PROVISIONS**

### Section

- 70.01 Licenses required to engage in certain trades, businesses, or professions
- 70.02 Application for license
- 70.03 Standards; issuance of license
- 70.04 Date and duration of license
- 70.05 License not transferable
- 70.06 License certificate to be displayed
- 70.07 Revocation or suspension
- 70.08 Appeal and review
- 70.09 Exemptions

### **§ 70.01 LICENSES REQUIRED TO ENGAGE IN CERTAIN TRADES, BUSINESSES, OR PROFESSIONS.**

No person shall engage in any of the trades, businesses, or professions for which licenses are required by any provision of this code or any other ordinance of the town without first applying for and obtaining a license from the Clerk-Treasurer or other duly authorized issuing authority.

### **§ 70.02 APPLICATION FOR LICENSE.**

(A) All original applications for licenses, unless otherwise specifically provided, shall be made to the Clerk-Treasurer in writing upon forms to be furnished by him or her and shall contain:

- (1) The name of the applicant and of each officer, partner, or business associate;
- (2) His or her present occupation and place of business;
- (3) His or her place of residence for five years next preceding the date of application;
- (4) The nature and location of the intended business or enterprise;

(5) The period of time for which the license is desired;

(6) A description of the merchandise to be sold, if for a vendor;

(7) Such other information concerning the applicant and his or her business as may be reasonable and proper, having regard to the nature of the license desired.

(B) Renewal of an annual license may be granted to a licensee in good standing upon the original application, unless otherwise provided.

(C) With each original or renewal application, the applicant shall deposit the fee required for the license requested.

(D) It shall be unlawful to knowingly make any false statement or representation in the license application.

#### **§ 70.03 STANDARDS; ISSUANCE OF LICENSE.**

(A) Upon receipt of such application for a license, accompanied by the proper fee, if approval by another officer or department is not required, the Clerk-Treasurer shall forthwith deposit the fee in the General Fund of the town and issue to the applicant a proper license certificate signed by the Clerk-Treasurer and any other appropriate town official. If for any reason the license is not issued, the license fee shall be returned to the applicant.

(B) Upon receipt of an application, an investigation of the applicant's business reputation and moral character shall be made.

(C) The application shall be approved unless such investigation discloses tangible evidence that the conduct of the applicant's business would pose a substantial threat to the public health, safety, morals, or general welfare. Tangible evidence of any of the following will constitute valid reasons for disapproval of an application:

(1) The applicant has been convicted of a crime of moral turpitude;

(2) The applicant has made willful misstatements in the application;

(3) The applicant has committed prior violations of ordinances pertaining to itinerant merchants, peddlers, solicitors, and the like;

(4) The applicant has committed prior fraudulent acts;

- (5) The applicant has a record of continual breaches of solicited contracts; or
- (6) The applicant has an unsatisfactory moral character.

**§ 70.04 DATE AND DURATION OF LICENSE.**

(A) A license shall not be valid beyond the expiration date therein specified and, unless otherwise provided, shall not extend beyond December 31 of the year issued. However, at any time after December 14, licenses may be issued for the ensuing calendar year. Unless otherwise specified, the full annual fee will be required of licensees irrespective of the date of issue of the license.

(B) In no event shall a license be granted to any business or any person for a longer time than one year.

**§ 70.05 LICENSE NOT TRANSFERABLE.**

Every license shall be issued to a real party in interest in the enterprise or business, and unless otherwise provided, no license shall be assigned or transferred.

**§ 70.06 LICENSE CERTIFICATE TO BE DISPLAYED.**

Every licensee carrying on business at a fixed location shall keep posted in a prominent place upon the licensed premises the license certificate. Other licensees shall carry their license certificates at all times and whenever requested by any officer or citizen, shall exhibit the license.

**§ 70.07 REVOCATION OR SUSPENSION.**

A license granted under this chapter may be suspended or revoked for any of the following reasons:

- (A) Any fraud or misrepresentation contained in the license application;
- (B) Any fraud, misrepresentation, or false statement made in connection with the business being conducted under the license;
- (C) Any violation of this chapter;
- (D) Conviction of the licensee of any felony, or conviction of the licensee of any misdemeanor involving moral turpitude; or

(E) Conducting the business licensed in an unlawful manner or in such a way as to constitute a menace to the health, safety, morals, or general welfare of the public.

**§ 70.08 APPEAL AND REVIEW.**

(A) Any person aggrieved by a decision under §~ 110.03 or 110.07 shall have the right to appeal to the Town Council. The appeal shall be taken by filing with the Town 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 Town Council shall set the time and place for a hearing, and notice for such hearing shall be given to such person by mail at his last known address, at least ten days prior to the date set for the hearing.

(B) The order of the Town Council after the hearing shall be final.

**§ 70.09 EXEMPTIONS.**

The provisions of this chapter shall not apply to any business, occupation or profession which is exempt from municipal licensing or license taxes pursuant to state or federal law.

**CHAPTER 71: PEDDLERS AND SOLICITORS**

Section

- 71.01 Definitions
- 71.02 License requirement
- 71.03 Application procedure
- 71.04 Standards for issuance
- 71.05 Revocation procedure
- 71.06 Standards for revocation
- 71.07 Appeal procedure
- 71.08 Exhibition of identification
- 71.09 Town policy on soliciting
- 71.10 Notice regulating soliciting
- 71.11 Duty of solicitors to ascertain notice
- 71.12 Prohibited solicitation

**§ 71.01 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 town and who, in the furtherance of such business, uses any building, structure, vehicle, or any place within the town.

**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 town.

**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.

#### **§ 71.02 LICENSE REQUIREMENT.**

(A) Any person who is an itinerant merchant, peddler, or solicitor shall obtain a license before engaging in such activity within the town.

(B) The fee for the license required by this chapter shall be as set from time to time by the Town Council.

(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.

#### **§ 71.03 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 town;
    - (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 town, 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.

#### **§ 71.04 STANDARDS FOR ISSUANCE.**

(A) Upon receipt of an application, an investigation of the applicant's business reputation and moral character shall be made.

(B) The application shall be approved unless such investigation discloses tangible evidence that the conduct of the applicant's business would pose a substantial threat to the public health, safety, morals, or general welfare. In particular, tangible evidence that the applicant has done any of the following will constitute valid reasons for disapproval of an application:

- (1) Has been convicted of a crime of moral turpitude;
- (2) Has made willful misstatements in the application;
- (3) Has committed prior violations of ordinances pertaining to itinerant merchants, peddlers, solicitors, and the like;
- (4) Has committed prior fraudulent acts; or
- (5) Has a record of continual breaches of solicited contracts.

#### **§ 71.05 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 § 71.06. 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.

#### **§ 71.06 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;
- (B) Any fraud, misrepresentation, or false statement made in connection with the business being conducted under the license;
- (C) Any violation of this chapter;
- (D) Conviction of the licensee of any felony, or conviction of the licensee of any misdemeanor involving moral turpitude; or
- (E) Conducting the business licensed in an unlawful manner or in such a way as to constitute a menace to the health, safety, morals, or general welfare of the public.

#### **§ 71.07 APPEAL PROCEDURE.**

(A) Any person aggrieved by a decision under §§ 71.04 or 111.06 shall have the right to appeal to the Town Council. The appeal shall be taken by filing with the Town 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 Town 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 § 71.05.

(B) The order of the Town Council after the hearing shall be final.

#### **§ 71.08 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 town 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.

#### **§ 71.09 TOWN POLICY ON SOLICITING.**

It is hereby declared to be the policy of the town that the occupants of the residences in the

town shall make the determination of whether solicitors shall be, or shall not be, invited to their respective residences.

#### **§ 71.10 NOTICE REGULATING SOLICITING.**

(A) Notice of the refusal of invitation to solicitors, to any residence, shall be given on a weatherproof card, approximately 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”

(B) The letters shall be at least 1/3-inch in height. For the purpose of uniformity, the cards shall be provided by the Town Marshall 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.

#### **§ 71.11 DUTY OF SOLICITORS TO ASCERTAIN NOTICE.**

(A) It shall be the duty of every solicitor upon going onto any premises in the town upon which a residence is located to first examine the notice provided for in § 71.10 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.

#### **§ 71.12 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 § 71.10 above.

### **CHAPTER 72: BUSINESS REGULATIONS**

#### *Section*

## 72.01 Sexually oriented business regulations

### **§ 72.01 SEXUALLY ORIENTED BUSINESS REGULATIONS.**

Sexually oriented businesses require special supervision from the Town in order to protect and preserve the health, safety, morals and welfare of the patrons of such businesses as well as the citizens of the Town.

The Town Council finds that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature.

The concern over sexually transmitted diseases is a legitimate health concern of the Town which demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens.

Licensing is a legitimate and reasonable means of accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.

There is evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values.

It is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area.

The Town Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight.

The Town Council has determined that locational criteria alone do not adequately protect the health, safety, and general welfare of the people of this Town.

It is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the secondary effects of sexually oriented businesses.

It is not the intent of the Town Council to condone or legitimize the distribution of obscene material, and the Council recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in the Town.

Pursuant to the authority granted by the Constitution and the legislature of the State of Indiana, BE IT ENACTED BY THE TOWN COUNCIL OF LINDEN, MONTGOMERY COUNTY, INDIANA:

### **SECTION I. PURPOSE AND FINDINGS.**

(A.) Purpose. It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the Town, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the Town. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this ordinance 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 ordinance to condone or legitimize the distribution of obscene material.

(B) Findings. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the Council, and on findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), and *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), and on studies in other communities including, but not limited to Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; and also on findings from the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, ( June 6, 1989, State of Minnesota), the Council finds:

(1) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.

(2) Certain employees of sexually oriented businesses defined in this ordinance as adult theatres and cabarets engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.

- (3) Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.
- (4) Offering and providing such space encourages such activities, which creates unhealthy conditions.
- (5) Persons frequent certain adult theatres, and adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.
- (6) At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.
- (7) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States – 600 in 1982, 2,200 in 1983, 4,600 in 1984, 8,555 in 1985, and 253,448 through December 31, 1992.
- (8) Since 1981 and to the present, there have been an increasing cumulative number of persons testing positive for the HIV antibody test in the State of Indiana.
- (9) The number of cases of early (less than one year) syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982 and 45,200 through November of 1990.
- (10) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases being reported in 1990.
- (11) The surgeon general of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.
- (12) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.
- (13) Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those

activities and maintain those facilities.

(14) Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view “adult” oriented films.

(15) The findings noted in paragraphs number 1 through 15 raise substantial governmental concerns.

(16) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

(17) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place a heretofore nonexistent incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the Town. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

(18) Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theatres.

(19) Requiring licensees of sexually oriented businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.

(20) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.

(21) It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct which this ordinance is designed to prevent or who are likely to be witnesses to such activity.

(22) The fact that an applicant for an adult use license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this ordinance.

(23) The barring of such individuals from the management of adult uses for a period of years serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.

(24) The general welfare, health, morals and safety of the citizens of the Town will be promoted by the enactment of this ordinance.

## **SECTION II. DEFINITIONS.**

(1) ADULT ARCADE means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of “specified sexual activities” or “specified anatomical areas.”

(2) ADULT BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO STORE means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:

(a) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of “specified sexual activities” of “specified anatomical areas”; or

(b) instruments, devices, or paraphernalia which are designed for use in connection with “specified sexual activities.”

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing “specified sexual activities” or “specified anatomical areas” and still be categorized as ADULT BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an ADULT BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

(3) ADULT CABARET means a nightclub, bar restaurant, or similar commercial establishment which regularly features:

- (a) persons who appear in a state of nudity or semi-nude; or
- (b) live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”; or
- (c) films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”.

(4) ADULT MOTEL means a hotel, motel or similar commercial establishment which:

- (a) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit televisions transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”; and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; or
- (b) offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
- (c) allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours.

(5) ADULT MOTION PICTURE THEATER means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of “specified sexual activities” or specified anatomical areas.”

(6) ADULT THEATER means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”.

(7) EMPLOYEE means a person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

(8) ESCORT means a person who, for consideration, agrees or offers to act as a companion, guide or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

(9) ESCORT AGENCY means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

(10) ESTABLISHMENT means and includes any of the following:

- (a) the opening or commencement of any sexually oriented business as a new business;
- (b) the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- (c) the additions of any sexually oriented business to any other existing sexually oriented business; or
- (d) the relocation of any sexually oriented business.

(11) LICENSEE means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of any employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.

(12) NUDE MODEL STUDIO means a place where a person who appears semi-nude, in a state of nudity, or who displays “specified anatomical areas” and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of Indiana or a college, junior college or university supported entirely or in part by public taxation; 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 in a structure:

- (a) that has no sign visible from the exterior of the structure and no other advertising that indicates a nude or 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; and
- (c) where no more than one nude or semi-nude model is on the premises at any one time.

(13) NUDITY or a STATE OF NUDITY means that showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple,

or the showing of the covered male genitals in a discernibly turgid state.

(14) PERSON means an individual, proprietorship, partnership, corporation, association, limited liability company, or other legal entity.

(15) SEMI-NUDE or in a SEMI-NUDE CONDITION means the showing of the female breast below a horizontal line across the top of the areola at its highest point of the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

(16) SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

(a) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(b) activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

(17) SEXUALLY ORIENTED BUSINESS means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

(18) SPECIFIED ANATOMICAL AREAS means:

(a) the human male genitals in a discernibly turgid state, even if completely and opaquely covered; or

(b) less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.

(19) SPECIFIED CRIMINAL ACTIVITY means any of the following offenses:

(a) prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal penal code of other states or countries;

(b) for which:

(1) less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a felony misdemeanor offense;

(2) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

(3) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

(c) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

(20) SPECIFIED SEXUAL ACTIVITIES means any of the following:

(a) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;

(b) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or

(c) excretory functions as part of or in connection with any of the activities set forth in (a) through (b) above.

(21) SUBSTANTIAL ENLARGEMENT of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor areas exist on the date this ordinance takes effect.

(22) TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business means and includes any of the following:

(a) the sale, lease, or sublease of the business;

(b) the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

(c) 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.

### **SECTION III. CLASSIFICATION.**

Sexually oriented businesses are classified as follows:

- (1) adult arcades;
- (2) adult bookstores, adult novelty stores, or adult video stores;
- (3) adult cabarets;
- (4) adult motels;
- (5) adult motion picture theaters;
- (6) adult theaters;
- (7) escort agencies;
- (8) nude model studios; and
- (9) sexual encounter centers.

### **SECTION IV. LICENSE REQUIRED.**

(A) It is unlawful:

- (1) For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the Town pursuant to this ordinance.
- (2) For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the Town pursuant to this ordinance.
- (3) For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this ordinance.

(B) An application for a license must be made on a form provided by the Town.

(C) All applicants must be qualified according to the provisions of this ordinance. The application may request and the applicant shall provide such information (including fingerprints) as to enable the Town to determine whether the applicant meets the qualifications established in this ordinance.

(D) If a person who wishes to operate a sexually oriented business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a 20 percent or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under the following Section and each applicant shall be considered a licensee if a license is granted.

(E) The completed application for a sexually oriented business license shall contain the following information and shall be accompanied by the following documents:

(1) If the applicant is:

(a) an individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is 18 years of age;

(b) a partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;

(c) a corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the names and capacity of all officers, directors and principal stockholders, and the name of the registered corporate agent and the address of the registered office for service of process.

(2) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she must state 1) the sexually oriented business's fictitious name and 2) submit the required registration documents.

(3) Whether the applicant, or a person residing with the applicant, has been convicted of a specified criminal activity as defined in this ordinance, and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each.

(4) Whether the applicant, or a person residing with the applicant, has had a previous license under this ordinance or other similar sexually oriented business ordinances from another city or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or a person residing with the

applicant has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is licensed under this ordinance whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.

(5) Whether the applicant or a person residing with the applicant holds any other licenses under this ordinance or other similar sexually oriented business ordinance from another city or county and, if so, the names and locations of such other licensed businesses.

(6) The single classification of license for which the applicant is filing.

(7) The location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s), if any.

(8) The applicant's mailing address and residential address.

(9) A recent photograph of the applicant(s).

(10) The applicant's driver's license number, Social Security number, and/or his/her state or federally issued tax identification number.

(11) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must 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 (6) inches.

(12) A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within one hundred (100) feet of the property to be certified; the property lines of any established religious institution/synagogue, school, or public park or recreation area within feet of the property to be certified. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted.

(13) If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in Section XIV.

(F) Before any applicant may be issued a sexually oriented business employee license, the applicant shall submit on a form to be provided by the Town the following information:

- (1) The applicant's name or any other name (including "stage" names) or aliases used by the individual;
- (2) Age, date, and place of birth;
- (3) Height, weight, hair and eye color;
- (4) Present residence address and telephone number;
- (5) Present business address and telephone number;
- (6) Date, issuing state and number of driver's permit or other identification card information;
- (7) Social Security number; and
- (8) Proof that the individual is at least eighteen (18) years of age.

(G) Attached to the application form for a sexually oriented business employee license as provided above, shall be the following:

- (1) A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the police department. Any fees for the photographs and fingerprints shall be paid by the applicant.
- (2) A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other county, city, state, or country has ever had a license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the issuing or denying jurisdiction, any describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.
- (3) A statement whether the applicant has been convicted of a specified criminal activity as defined in this ordinance and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.

## **SECTION V. ISSUANCE OF LICENSE.**

(A) Upon the filing of said application for a sexually oriented business employee license, the Town shall issue a temporary license to said applicant. The application shall then be referred to the Town Marshal for an investigation to be made on such information as is contained on the application. The Town Marshal shall complete the investigation process and forward documents to the Town Council within fifteen (15) days from the date the completed application is filed. The application process shall be completed within thirty (30) days from the date the completed application is filed. After the investigation, the Town shall issue a license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

(1) The applicant has failed to provide information reasonable necessary for issuance of the license or has falsely answered a question or request for information on the application form;

(2) The applicant is under the age of eighteen (18) years;

(3) The applicant has been convicted of a “specified criminal activity” as defined in this ordinance;

(4) The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this ordinance; or

(5) The applicant has had a sexually oriented business employee license revoked by the Town within two (2) years of the date of the current application. If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in Section X.

(B) A license granted pursuant to this section shall be subject to annual renewal upon the written application of the applicant and a finding by the Town that the applicant has not been convicted of any specified criminal activity as defined in this ordinance or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in Section VI.

(C) Within 30 days after receipt of a completed sexually oriented business application, the Town shall approve or deny the issuance of a license to an applicant. The Town shall approve the issuance of a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

(1) An applicant is under eighteen (18) years of age.

(2) An applicant or a person with whom applicant is residing is overdue in payment to the Town

of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business.

(3) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.

(4) An applicant or a person with whom the applicant is residing has been denied a license by the Town to operate a sexually oriented business within the preceding twelve (12) months or whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months.

(5) An applicant or a person with whom the applicant is residing has been convicted of a specified criminal activity defined in this ordinance.

(6) The premises to be used for the sexually oriented business have not been approved by the health department, fire department, and the building official as being in compliance with applicable laws and ordinances.

(7) The license fee required by this ordinance has not been paid.

(8) An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this ordinance.

(D) The license, if granted shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business and the classification for which the license is issued pursuant to Section III. All licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time.

(E) Any fire department and safety officials shall complete their certification that the premises is in compliance or not in compliance within twenty (20) days of receipt of the application by the Town.

(F) A sexually oriented business license shall issue for only one classification as found in Section III.

## **SECTION VI. FEES.**

(A) Every application for a sexually oriented business license (whether for a new license or for renewal of an existing license) shall be accompanied by a \$250 non-refundable application and investigation fee.

(B) In addition to the application and investigation fee required above, every sexually oriented business that is granted a license (new or renewal) shall pay to the Town an annual non-refundable license fee of \$100 within thirty (30) days of license issuance or renewal.

(C) Every application for a sexually oriented business employee license (whether for a new license or for renewal of an existing license) shall be accompanied by an annual \$100 non-refundable application, investigation, and license fee.

(D) All license applications and fees shall be submitted to the Clerk-Treasurer of the Town.

### **SECTION VII. INSPECTION.**

(A) An applicant or licensee shall permit representatives of the Police Department, Health Department, Fire Department, or other Town departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.

(B) A person who operates a sexually oriented business or his agent or employee commits an offense if he refuses to permit such lawful inspections of the premises at any time it is open for business.

### **SECTION VIII. EXPIRATION OF LICENSE.**

(A) Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section IV. Application for renewal shall be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the license will not be affected.

(B) When the Town denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the Town finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if a least ninety (90) days have elapsed since the date denial became final.

### **SECTION IX. SUSPENSION.**

(A) The Town shall suspend a license for a period not to exceed thirty (30) days if it determines that a licensee or an employee of a licensee has:

- (1) violated or is not in compliance with any section of this ordinance;
- (2) refused to allow an inspection of the sexually oriented business premises as authorized by

this chapter.

## **SECTION X. REVOCATION.**

(A) The Town shall revoke a license if a cause of suspension in Section IX occurs and the license has been suspended within the preceding twelve (12) months.

(B) The Town shall revoke a license if it determines that:

(1) a licensee gave false or misleading information in the material submitted during the application process;

(2) a licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(3) a licensee has knowingly allowed prostitution on the premises;

(4) a licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;

(5) except in the case of an adult motel, a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises; or

(6) a licensee is delinquent in payment to the Town, County, or State for any taxes or fees past due.

(C) When the Town revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued a sexually oriented business license for one (1) year from the date the revocation became effective. If, subsequent to revocation, the Town finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days has elapsed since the date the revocation became effective.

(D) After denial of an application, or denial of a renewal of an application, or suspension or revocation of any license, the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court.

## **SECTION XI. TRANSFER OF LICENSE.**

A licensee shall not transfer his/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 application.

## **SECTION XII. LOCATION.**

(A) A person commits an offense if the person operates or causes to be operated a sexually oriented business within one hundred (100) feet of:

(1) A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;

(2) A public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, school corporation offices, junior colleges, and universities; school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;

(3) A public park or recreational area which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, or other similar public land within the city which is under the control, operation, or management of the Town;

(4) An entertainment business which is oriented primarily towards children or family entertainment;

(5) A licensed premises, licensed pursuant to the alcoholic beverage control regulations of the State; or

(6) A residence or residential dwelling.

(B) A person commits an offense if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within one hundred (100) feet of another sexually oriented business.

(C) A person commits an offense if that person causes or permits the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

(D) For the purpose of subsection A of this Section, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the

building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in subsection B.

(E) For purposes of subsection B of this Section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located.

### **SECTION XIII. ADDITIONAL REGULATIONS FOR ADULT MOTELS.**

(A) Evidence that a sleeping room in a hotel, motel, or a similar commercial establishments has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this ordinance.

(B) A person commits an offense if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented license, he rents or subrents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or subrents the same sleeping room again.

(C) For purposes of subsection (B) of this section, the terms “rent” or “subrent” mean the act of permitting a room to be occupied for any form of consideration.

### **SECTION XIV. REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS OR LIVE ENTERTAINMENT IN VIEWING ROOMS.**

(A) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(1) Upon application for a sexually oriented license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager’s stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager’s station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit 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 should be

oriented to the north or to some designated street or object and should 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 (6") inches. The Town 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) The application shall be sworn to be true and correct by the applicant.
- (3) No alteration in the configuration or location of a manger's station may be made without the prior approval of the Town.
- (4) It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in each manger's station at all times that any patron is present inside the premises.
- (5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manger's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager'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 from at least one of the manger's stations. The view required in this subsection must be by direct line of sight from the manager's station.
- (6) It shall be the duty of the licensee that the view area specified in subsection (5) remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all time, 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 in the application filed pursuant to subsection (1) of this Section.
- (7) No viewing room may be occupied by more than one person at any time.
- (8) The 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 (5.0) foot-candles as measured at the floor level.
- (9) It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
- (10) No licensee shall allow openings of any kind to exist between viewing rooms or booths.

(11) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.

(12) The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.

(13) The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(14) The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty eight (48") inches of the floor.

(B) A person having a duty under Subsection (1) through (14) of Subsection (A) above commits an offense if he knowingly fails to fulfill that duty.

#### **SECTION XV. ADDITIONAL REGULATIONS FOR ESCORT AGENCIES.**

(A) An escort agency shall not employ any person under the age of 18 years.

(B) A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

#### **SECTION XVI. ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS.**

(A) A nude model studio shall not employ any person under the age of 18 years.

(B) A person under the age of 18 years commits an offense if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under 18 years was in a restroom not open to public view or visible to any other person.

(C) A person commits an offense if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right of way.

(D) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

**SECTION XVII. ADDITIONAL REGULATIONS CONCERNING PUBLIC NUDITY.**

(A) It shall be an offense for a person who knowingly and intentionally, in a sexually oriented business, appears in a state of nudity or depicts specified sexual activities.

(B) It shall be an offense for a person who knowingly or intentionally in a sexually oriented business appears in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ten (10) feet from any patron or customer and on a stage at least two feet from the floor.

(C) It shall be an offense for an employee, while semi-nude in a sexually oriented business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in a sexually oriented business.

(D) It shall be an offense for any employee, while semi-nude, to touch a customer or the clothing of a customer.

**SECTION XVIII. PROHIBITION AGAINST CHILDREN IN A SEXUALLY ORIENTED BUSINESS.**

A person commits an offense if the person knowingly allows a person under the age of 18 years on the premises of a sexually oriented business.

**SECTION XIX. HOURS OF OPERATION.**

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of one o'clock (1:00) A.M. and eight o'clock (8:00) A.M. on weekdays and Saturdays, and one o'clock (1:00) A.M. and noon (12:00) P. M. on Sundays.

**SECTION XX. EXEMPTIONS.**

(A) It is a defense to prosecution under Section XVII that a person appearing in a state of nudity did so in a modeling class operated:

(1) by a proprietary school, licensed by the State of Indiana; 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 nude person is available for viewing; and

(b) where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and

(c) where no more than one nude model is on the premises at any one time.

#### **SECTION XXI. INJUNCTION FINES.**

A person who operates or causes to be operated a sexually oriented business without a valid license is subject to a suit for injunctions as well as prosecution for criminal violations under any applicable county, state or federal laws. Such violations or offenses shall be punishable by a fine of \$200.00. Each day a sexually oriented business so operates is a separate offense or violation. A person who commits an offense or violation as defined in any other provision of this ordinance is subject to a fine of \$100.00. Each day a violation occurs is a separate offense or violation.

#### **SECTION XXII. SEVERABILITY.**

If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected.

#### **SECTION XXIII. CONFLICTING ORDINANCES REPEALED.**

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

### **TITLE VIII: GENERAL OFFENSES**

Chapter

- 80. GENERAL OFFENSES**
- 81. WEAPONS**

## **CHAPTER 80: GENERAL OFFENSES**

Section

### *Curfew for Minors*

- 80.01 Definitions
- 80.02 Violations
- 80.03 Enforcement

### ***CURFEW FOR MINORS***

#### **§80.01 DEFINITIONS**

As used within this Ordinance, the following words and phrases shall have the meanings ascribed to them below.

"Curfew hours" refers to the hours of 10:00 p.m. through 5:00 a.m. on Sunday through Thursday morning and 11:01 p.m. through 5:00 a.m. on Friday and Saturday. October 15 through November 1, curfew hours are 9:00 p.m. to 5:00 a.m., regardless of the day of the week.

"Emergency" refers to 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 accident, or other similar circumstances.

"Establishment" refers to any privately-owned place of business within the Town of Linden, Indiana, operated for a profit, to which the public is invited, including, but not limited to any place of amusement or entertainment. With respect to such Establishment, the term "Operator" shall mean any person, and any firm, association, partnership (and the members or partners thereof) and/or any corporation (and the officers thereof) conducting or managing that Establishment.

"Minor" refers to any person under eighteen (18) years of age who has not been emancipated by court order.

"Officer" refers to a police or other law enforcement officer charged with the duty of enforcing the laws of the State of Indiana and/or the ordinances of the Town of Linden, Indiana.

"Parent" refers to

- (1) a person who is a minor's biological or adoptive parent and who has legal custody of a minor (including either parent, if custody is shared under a court order or agreement);
- (2) a person who is the biological. or adoptive parent with whom a minor regularly resides;
- (3) a person judicially appointed as a legal guardian of the minor; and/or;
- (4) a person eighteen (18) years of age or older standing in loco parentis (as indicated by the authorization of an individual listed in part(s) (1), (2) or (3) of this definition, above, for the person to assume the care or physical custody of the child, or as indicated by any other circumstances).

"Person" refers to an individual, not to any association, corporation, or any other legal entity.

"Public Place" refers to 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, transportation facilities and shops.

"Remain" refers to the following actions:

- (1) to linger or stay at or upon a place; and/or
- (2) to fail to leave a place when requested to do so by an officer or by the owner, operator or other person in control of that place.

"Temporary care facility" refers to a non-locked, non-restrictive shelter at which minors may wait, under visual supervision to be retrieved by a parent. No minors waiting in such facility shall be handcuffed and/or secured (by handcuffs or otherwise) to any stationary object.

## **§80.02 VIOLATIONS**

- (a) It shall be unlawful for a minor, during curfew hours, to remain in or upon any Public Place within the Town, to remain in any motor vehicle operating or parked therein, or to remain in or upon the premises of any Establishment within the Town, unless:
- (1) the minor is accompanied by a parent; or
  - (2) the minor is involved in an emergency; or
  - (3) the minor is engaged in an employment activity, or is going to or returning home from such activity, without detour or stop; or
  - (4) the minor is on the sidewalk directly abutting a place where he or she resides with a parent; or
  - (5) the minor is attending an activity 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 from such an activity without detour or stop; or
  - (6) the minor is on an errand at the direction of a parent, and the minor has in his or her possession a writing signed by the parent containing the following information, the name, signature, address and telephone number of the parent authorizing the errand, the telephone number where the parent may be reached during the errand, the name of the minor, and a brief description of the errand, the minor's destination(s) and the hours the minor is authorized to be engaged in the errand; or
  - (7) the minor is involved in interstate travel through, or beginning or terminating in, the Town of Linden, Indiana, or
  - (8) the minor is exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, or the right of assembly.
- (b) It shall be unlawful for a minor's parent to knowingly permit, allow or encourage such minor to violate this Ordinance.
- (c) It shall be unlawful for a person who is the owner or operator of any motor vehicle to knowingly permit, allow or encourage a violation of this Ordinance.

- (d) It shall be unlawful for the Operator of any Establishment or for 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 under this subsection 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.
- (e) It shall be unlawful for my person (including any minor) to give a false name, address, or telephone number to any officer investigating a possible violation of this section Ordinance.

### **§80.03 ENFORCEMENT**

(1) Minors. 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 Town during Curfew hours is in violation of this Ordinance.

(A) if such investigation reveals that the presence of such minor is in violation of this Ordinance; then:

(1) if the minor has not previously been issued a warning for any such violation, then the officer shall issue a verbal warning to the minor, which shall be followed by a written d n g mailed by the police department to the minor and his or her parent(s); or

(2) if the minor has previously been issued a warning for any such violation, then the violation shall be considered a delinquent act as defined by Indiana Code 3 1-37- 1-2; and,

(B) As soon as practicable, the officer shall:

(1) release the minor to his or her parent(s);

(2) if a minor's parent(s) cannot be located, place the minor in a temporary care facility for a period not to exceed the remainder of the curfew hours and/or take the minor to a judge or intake officer of the juvenile court to be dealt with in the manner and pursuant to such procedures as required by law.

(C)If an investigation by an officer reveals that a person has violated this Ordinance, and if the person has not previously been issued a warning with respect to

any such violation, an officer shall issue a verbal warning to the person, which shall be followed by a written warning mailed by the police department to the person; however, if any such warning has previously been issued to that person that the officer shall charge the person with a violation and shall issue a summons directing the person to appear in court.

## **CHAPTER 81: WEAPONS**

### Section

#### *Firearms on Town Property*

- 81.01 Prohibition
- 81.02 Signs required
- 81.03 Exemptions

### ***FIREARMS ON TOWN PROPERTY***

#### **§ 81.01 PROHIBITION.**

No person shall carry a concealed firearm in or on any property, park, building, or portion of a building now or hereafter owned, leased as lessee, operated, occupied, managed, or controlled by the town, as well as the appurtenant premises to such buildings, upon which appropriate signage has been placed indicating that concealed firearms are prohibited therein.

#### **§ 81.02 SIGNS REQUIRED.**

Signs shall be visibly posted on the exterior of each entrance by which the general public can access the building, appurtenant premise, or park. The town shall exercise discretion in determining the necessity and appropriate location for other signs posted on the interior of the building, appurtenant premise, or park.

#### **§ 81.03 EXEMPTIONS.**

(A) The prohibitions set forth in this chapter shall not apply to persons who are exempt from concealed weapons prohibitions under state or federal law or to any duly authorized local, state, or federal law enforcement officer while on duty.

(B) The prohibitions set forth in this chapter shall not apply to highways or public highways owned or administered by the town.

## **TITLE IX: LAND USAGE**

Chapter

**90. BUILDING REGULATIONS**

**CHAPTER 90: BUILDING REGULATIONS**

Section

- 90.01 State building code adopted by reference
- 90.02 State enforcement statutes adopted by reference
- 90.03 Unsafe Building Law
- 90.04 Indiana code adoption
- 90.05 Declaration of public nuisance
- 90.06 Powers of building safety commissioner
- 90.07 Limitation of powers
- 90.08 Standards
- 90.09 Substantial property interest
- 90.10 Construction requirements
- 90.11 Unsafe building fund
- 90.12 Infractions
- 90.13 Electric inspection fee

***Mobile Homes***

- 90.21 Declaration
- 90.22 Definition
- 90.23 Saving clause
- 90.24 Enforcement
- 90.25 Exceptions
- 90.26 Town-owned property

***Public Property***

- 90.31 Planting of trees and other vegetation

***UNSAFE BUILDINGS***

**§ 90.01 STATE BUILDING CODE ADOPTED BY REFERENCE.**

Pursuant to the authority granted under IC. 22-13-2-3, the town hereby adopts by reference the Indiana Building Code, contained in 675 I.A.C. 13-2.1-1 *et seq.*, including any future amendments.

#### **§ 90.02 STATE ENFORCEMENT STATUTES ADOPTED BY REFERENCE.**

(A) Pursuant to the authority granted under I.C. 36-7-9-3, the town hereby adopts by reference I.C. 36-7-9, pertaining to enforcement of building standards.

(B) The enforcement authority responsible for the administration of the statutes adopted under this section shall be the town executive, or such other executive department as may be established or designated by ordinance.

(C) For purposes of this section, *SUBSTANTIAL PROPERTY INTEREST* shall have the same meaning as set forth in I.C. 36-7-9-2.

#### **§ 90.03 UNSAFE BUILDING LAW.**

Under the provisions of IC 36-7-9, there is hereby established the Linden Unsafe Building Law.

#### **§ 90.04 INDIANA CODE ADOPTION.**

Indiana Code 36-7-9-1 through 36-7-9-28 is hereby adopted by reference as the Linden Unsafe Building Law. All proceedings within the town for the inspection, repair, and removal of unsafe buildings shall be governed by this law and the provisions of this chapter. In the event the provisions of this chapter conflict with the provisions of IC 36-7-9-1 through 36-7-9-28, then the provisions of the state statute shall control.

#### **§ 90.05 DECLARATION OF PUBLIC NUISANCE.**

All buildings or portions thereof within the town which are determined after inspection by the Building Safety Commissioner to be unsafe as defined in this chapter are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition, or removal.

#### **§ 90.06 POWERS OF BUILDING SAFETY COMMISSIONER.**

The Linden Building Safety Commissioner, as chief administrative officer of the Department of Buildings Safety, who shall be appointed by and serve at the will and pleasure of the Town Board of Trustees, 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.

#### **§ 90.07 LIMITATION OF POWERS.**

Wherever in the building regulations of the town or the Linden Unsafe Building Law it is provided that anything must be done to the approval of or subject to the direction of the Building Safety Commissioner, or any other officer of the town, this shall be construed to give such officer only the discretion of determining whether the rules and standards established by ordinance have been complied with; and no such provisions shall be construed as giving any office discretionary powers as to what such regulations or standards shall be, power to require conditions not prescribed by ordinance, or to enforce ordinance provisions in an arbitrary or discretionary manner.

#### **§ 90.08 STANDARDS.**

The description of an unsafe building contained in IC 36-7-9-4 is hereby supplemented to provide minimum standards for building condition or maintenance in the town by adding the following definition:

***UNSAFE BUILDING.*** 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 such 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 of 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 such an extent that the structural strength or stability thereof is materially less than it was before such 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 such buildings.

(F) Whenever any portion thereof has wracked, warped, buckled, or settled to such an 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 thereof, because of dilapidation, deterioration, or decay; faulty construction; the removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building; the deterioration, decay, or inadequacy of its foundation or any other cause, 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 such 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, exclusive of the foundation, shows thirty-three percent or more damage or deterioration of its supporting member or members, or fifty percent damage or deterioration of its non-supporting members, enclosing or outside walls or covering.

(K) Whenever the building or structure has been so damaged by fire, wind, earthquake, or flood or has become so dilapidated or deteriorated so as to become an attractive nuisance to children, or freely accessible to persons for the purpose of committing unlawful acts.

(L) Whenever any building or structure has been constructed, exists, or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of the town, or of any law or ordinance of the state or town relating to the condition, location, or structure of buildings.

(M) 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 fifty percent, or in any supporting part, member, or portion less than sixty-six percent of the strength, fire-resisting qualities or characteristics, or 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.

(N) 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 lights, air or sanitation facilities, or otherwise, is determined by the Health Official to be unsanitary, unfit for human habitation, or in such a condition that is likely to cause sickness or disease.

(O) 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 Fire Official to be a fire hazard.

(P) Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

#### **§ 90.09 SUBSTANTIAL PROPERTY INTEREST.**

The definition of *SUBSTANTIAL PROPERTY INTEREST* set forth in IC 36-7-9-2 is hereby incorporated by reference herein as if copied in full.

#### **§ 90.10 CONSTRUCTION REQUIREMENTS.**

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 pertaining to construction, plumbing, electrical, mechanical, and one and two family dwellings, promulgated by the Administrative Building Council of Indiana, shall be considered standard and acceptable practice for all matters covered by this chapter or orders issued pursuant to this chapter by the Building Safety Commissioner of the town.

#### **§ 90.11 UNSAFE BUILDING FUND.**

An Unsafe Building Fund is hereby established in the operating budget of the town in accordance with the provisions of IC 36-7-9-14.

#### **§ 90.12 INFRACTIONS.**

No person, firm, or corporation, whether as owner, lessee, sublease 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 chapter or any order issued by the town.

**§ 90.13 ELECTRIC INSPECTION FEE.**

Inspection fees solely for changes in electric service shall be a minimum of \$15.00 and a maximum of \$50.00, depending upon the amount of time and number of inspections required by the Electric Inspector, and extent of time expended related to the number and complexity of service changes.

***MOBILE HOMES***

**§ 90.21 DECLARATION.**

It is hereby declared to be unlawful for any owner, occupier or controller of land within the limits of the town to permit or cause a mobile home, as hereinafter defined, to be placed, erected, maintained or occupied on such land and used for human habitation, contrary to this chapter.

**§ 90.22 DEFINITION.**

The term mobile home as used in this chapter shall mean any mobile vehicle used or designed to be used for purposes of human habitation, whether for residential or business purposes; further that detachment of the wheels shall be deemed to alter the mobile nature of the vehicle; or a home not designed or constructed as a conveyance, which consists of two or more units, and which is ordinarily delivered to its permanent site by truck or its own temporarily attached moving carriage and then jointed together and placed on a permanent foundation with the undercarriage removed so as to constitute a permanent place of abode; however, a structure primarily designed and ordinarily sold as a modular home, shall not be construed to fall within this definition of a mobile home.

**§ 90.23 SAVING CLAUSE.**

Any mobile home now in existence within the town and currently occupied for the purpose of human habitation, whether residential or business, may be maintained and continued or replaced; however, if such mobile home shall be abandoned from the purposes of human habitation for more than one year, such land shall not further be used for the erection, maintenance or occupation by a mobile home for the purposes of human habitation, and violation thereof shall be subject to the terms and conditions of this chapter.

**§ 90.24 ENFORCEMENT.**

The power and duty of enforcement of this chapter is hereby placed in the Board of Trustees of the town, and the Board may institute legal proceedings in a court of competent jurisdiction, requesting a mandatory injunction directing the removal of any mobile home placed, maintained or occupied in violation of this chapter, and the violator shall thereby become liable for the payment of all costs of removal and costs of litigation, including court costs and attorney fees. Any person who violates any provision of this chapter shall be deemed to be maintaining a common nuisance and shall be guilty of a misdemeanor.

#### **§ 90.25 EXCEPTIONS.**

If, prior to the commission of any violation of this chapter by a particular citizen or resident of the town, that citizen or resident of the town shall be aggrieved by the application and enforcement of this chapter as against that citizen or resident of the town temporarily placing a mobile home upon a lot or other real property within the town limits, such citizen or resident of the town may make written application to the Board of Trustees of the town, requesting permission to place a mobile home upon a specifically designated parcel of land for a period not to exceed six months from the date of approval thereof. In the event of such application, the Board of Trustees shall provide such aggrieved person with a public hearing upon such request as herein provided. Upon receiving such application, the Board of Trustees shall promptly give notice of hearing upon such application to owners of real property located within a 300 foot radius of the front property line of the designated parcel of land on which such temporary placement is requested. Such notice shall be given or posted not less than ten days prior to the date of such hearing. After the conducting of such hearing, the Board of Trustees may authorize the temporary placement of such mobile home on such designated parcel of land for a period not to exceed six months from the date of such order, or enter such other order as the Board of Trustees shall deem necessary or proper.

#### **§ 90.26 TOWN OWNED PROPERTY.**

This chapter shall not apply to the governmental body of the town, the Linden Municipal Utilities, or any land owned and controlled by the Linden Town Government or its Utilities.

### ***PUBLIC PROPERTY***

#### **§ 90.31 PLANTING OF TREES AND OTHER VEGETATION.**

It shall be unlawful for any person, firm or corporation to plant any trees, or cause any trees to be planted on real estate owned by the town, or to plant any trees or cause any trees to be planted on real estate that is located within 15 feet of any town or public drain.

## TITLE X: PENALTIES

### Chapter

#### 100 Penalties

### CHAPTER 100 PENALTIES

#### Section

100.01 Penalties and procedures for payment thereof with respect to certain violation of the town code

100.02 Violations for which no penalty is prescribed in the proscriptive section of the code

100.03 Violation of Title IV §40.18(b)

#### § 100.01 PENALTIES AND PROCEDURES FOR PAYMENT THEREOF WITH RESPECT TO CERTAIN VIOLATIONS OF THE TOWN CODE

VOLUNTARY, TIMELY PAYMENT OF PENALTY. Notwithstanding the fine or penalty designated by the Town Code section applicable thereto, if, after notice of a violation of any of the Town Code provisions enumerated in this section, no further action shall be maintained by the Town for imposition of a penalty for such violation. This provision shall be applicable only to being charged with a first offense of a particular chapter of the Town Code.

FINE APPLICABLE PURSUANT TO THIS SECTION, provided such offense is admitted and penalty promptly paid by the violator.

<b>40.18(B)</b>	<b>Tampering with Water Meters</b>	<b>100.00</b>
<b>51.02</b>	<b>Truck route violation</b>	<b>50.00</b>
<b>51.03</b>	<b>Disregarding stop sign</b>	<b>50.00</b>
<b>52.04</b>	<b>Handicapped parking violation</b>	<b>50.00</b>
<b>52.05(b)</b>	<b>Parking trucks</b>	<b>50.00</b>
<b>52</b>	<b>Parking</b>	<b>100.00</b>

<b>Chapter 60</b>	<b>Abandoned vehicles</b>	<b>50.00</b>
<b>Chapter 61</b>	<b>First Animal Control Violation</b>	<b>25.00</b>
<b>Chapter 61</b>	<b>Subsequent Animal Control Violation</b>	<b>50.00</b>
<b>62.01</b>	<b>Public nuisances</b>	<b>100.00</b>
<b>63.17</b>	<b>Trees and bushes in public ways</b>	<b>\$50.00</b>
<b>63.18</b>	<b>Trees overhanging public ways</b>	<b>50.00</b>
<b>63.19</b>	<b>Alteration of streets</b>	<b>50.00</b>
<b>63.20</b>	<b>Restrictions on use of streets in inclement weather</b>	<b>50.00</b>
<b>63.21</b>	<b>Parking on Main Street (1<sup>st</sup> Offense)</b>	<b>20.00</b>
<b>63.21</b>	<b>Parking on Main Street (2<sup>nd</sup> offense in 60 day period)</b>	<b>50.00</b>
<b>63.22</b>	<b>Parking prohibited</b>	<b>20.00</b>
<b>63.23 a. &amp; b.</b>	<b>No “U” Turns</b>	<b>20.00</b>
<b>63.23 c. &amp; d.</b>	<b>Disobeying signal lights</b>	<b>50.00</b>
<b>63.23 e.</b>	<b>Parking across sidewalks or alleys (1<sup>st</sup> offense)</b>	<b>20.00</b>
<b>63.23e</b>	<b>Parking across sidewalks or alleys (2<sup>nd</sup> offense in 60 days)</b>	<b>50.00</b>
<b>63.23 f.</b>	<b>Failure to comply with lawful order of Town Marshal</b>	<b>50.00</b>
<b>63.24</b>	<b>Vehicle parking in alleys</b>	<b>20.00</b>
<b>63.25 or 68.07</b>	<b>Littering public ways</b>	<b>50.00</b>

<b>63.26</b>	<i>Hindering Access to a Fire Hydrant</i>	<b>50.00</b>
<b>63.27</b>	<b>Failure to Display Street Address to the Exterior of a building with 30 days of notification thereof</b>	<b>20.00</b>
<b>63</b>	<b>Penalty to be added for every 7 days of violation exceeding the initial violation of Chapter 63</b>	<b>20.00</b>
<b>64.04</b>	<b>Town speed limit</b>	<b>50.00</b>
<b>Chapter 67</b>	<b>Burning</b>	<b>200.00</b>
<b>68.01</b>	<b>Disturbing the peace</b>	<b>100.00</b>
<b>Chapter 68</b>	<b>Public Infractions</b>	<b>200.00</b>
<b>Chapter 69</b>	<b>Public Health</b>	<b>200.00</b>
<b>71.12</b>	<b>Solicitation Prohibited</b>	<b>100.00</b>
<b>Chapter 80</b>	<b>First Curfew Violation</b>	<b>50.00</b>
<b>Chapter 80</b>	<b>Any Subsequent Curfew Violation</b>	<b>153.00</b>
<b>Chapter 90</b>	<b>Building Regulations</b>	<b>300.00</b>

20-3 PROCEDURE AND APPLICABILITY. In order for alleged violator to take advantage of this chapter, the penalty must be paid, in cash, at the Office of the Clerk-Treasurer, Linden, Indiana, within 48 hours following the issuance of a citation of violation.

PROCEDURE INAPPLICABLE. If the penalty is not paid as herein prescribed, the Clerk-Treasurer shall have no authority to accept payment for any less than the penalty fixed for such violation in the Town Code section in which the activity is prescribed, and the Town may pursue enforcement of the violation in a Court of competent jurisdiction.

**§100.02 VIOLATIONS FOR WHICH NO PENALTY IS PRESCRIBED IN THE PROSCRIPTIVE SECTION OF THE CODE.**

(A) If the Town Code, in the section proscribing an activity, fixes no penalty therefore, then such penalty shall be deemed to be \$100.00 for each offense.

(B) 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.

SEVERABILITY. If any provision of this Chapter shall be deemed unenforceable, all other provisions hereof shall nevertheless remain in full force and effect.

INJUNCTIVE RELIEF AN ADDITIONAL REMEDY. All activity declared unlawful by the Town Code shall be subject to the remedy of the Town securing an injunction to require specific compliance therewith, and such remedy shall be in addition to any other fine or penalty.

In the event the Town shall apply to a Court of competent jurisdiction to enforce any provision of the Town Code, the person found thereby to be in violation of the Town Code shall be liable for the reasonable attorney fees incurred by the Town in the enforcement proceeding, and costs of the enforcement proceeding, together with any other finds or penalties provided by the Town Code.”

### **§100.03 VIOLATION OF TITLE IV § 40.18(B)**

(A) Any person, firm or corporation which violates the provisions of § 40.18(B) shall be subject to the following charges and penalties.

(1) The violator may be fined or suffer a penalty in any amount not exceeding \$100.00.

(2) For each day that the violation exists prior to actual discovery and remedy thereof by the utility, the customer of the meter shall be charged the sum of \$3.00 per day for water assumed to have been consumed during the period, which charge shall be in addition to all other sums due and owing the utility as reflected by the actual meter reading.

(3) The customer of the affected meter shall be charged the actual cost of re-connection, repair or adjustment of the meter, which sum shall be not less than \$25.00.

(B) It is hereby established that in the event of a violation of § 40.18(B), there is a rebuttable presumption that such violation occurred as a result of the actions of the customer utilizing that meter, or by some person, firm or corporation under his supervision and

control. The customer may disprove his liability and responsibility for such violation only by clear and convincing evidence in rebuttal of such presumption.

(C) Any person found to be violating any provision of § 40.41 through 50.52, except § 40.47, shall be served by the town with written notice, certified mail return receipt requested, or personal service, stating the nature of the violation and providing a period of ten days from the date of receipt of service for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.

(D) Any person who continues any violation beyond the time limit provided for in division (C) of this section shall be guilty of a misdemeanor and on conviction thereof shall be fined in an amount not exceeding \$50.00 for each violation. Each day in which any such violation continues shall be deemed a separate offense, the total of such penalties not to exceed \$1,000.00.

(E) Any person violating any of the provisions of this chapter shall become liable to the town for any expense, loss, or damage occasioned the town by reason of such violation, including enforcement costs and reasonable attorney fees.

