

COMMITTEE SESSION

ORDINANCES AND RESOLUTIONS UP FOR INTRODUCTION MAY 12, 2009

FINANCE COMMITTEE

Glynn A. Hines - Chair
Elizabeth M. Brown - Co-Chair
All Council Members

ACTION

R-09-05-06

A DECLARATORY RESOLUTION designating an “Economic Revitalization Area” under I.C. 6-1.1-12.1 for property commonly known as 3401 McArthur Drive, Fort Wayne, Indiana 46809 (Quoin Enterprises, LLC d/b/a Labeca, LLC)

Total cost of \$2,300,000 – They will make interior and Exterior improvements to an existing facility, as well purchase new manufacturing and information technology equipment – Ten full-time and ten part-time jobs will be created as a result of the project

To be passed this evening

R-09-05-07

A CONFIRMING RESOLUTION designating an “Economic Revitalization Area” under I.C. 6-1.1-12.1 for property commonly known as 3401 McArthur Drive, Fort Wayne, Indiana 46809 (Quoin Enterprises, LLC d/b/a Labeca, LLC)

Total cost of \$2,300,000 – Ten full-time and ten part-time jobs will be created as a result of the project

PUBLIC HEARING – MAY 26, 2009 – 5:30 P.M.

REGULATIONS COMMITTEE

*John Shoaff - Chair
Thomas F. Didier - Co-Chair
All Council Members*

G-09-05-01

AN ORDINANCE amending the Thoroughfare Plan of the City Comprehensive (“Master”) Plan by vacating public right-of-way Unbuilt portions of Columbia Avenue and Artas Avenue – vacation of the right-of-way will allow the single owner to develop the property with a commercial or office use

PUBLIC HEARING – MAY 26, 2009 – 5:30 P.M.

G-09-05-02

AN ORDINANCE amending the Thoroughfare Plan of the City Comprehensive (“Master”) Plan by vacating public right-of-way The Fort Wayne Housing Authority is continuing to redevelop this area off Nuttman Avenue with multi-family apartment units Iroquois Court and Cheyenne Drive will be integrated into the development as a private drives to serve the apartments

PUBLIC HEARING – MAY 26, 2009 – 5:30 P.M.

R-09-05-04

A RESOLUTION that will amend the Maumee River Basin Commission’s updated Flood Mitigation Plan to be the official plan of the City of Fort Wayne, so as to ensure public safety and awareness

Adoption to the Maumee River Basin Commission Flood Mitigation Plan as required by the voluntary participation in the National Flood Insurance Program’s (NFIP) Community Rating System (CRS)

REGULATIONS COMMITTEE CONTINUED

ACTION

G-09-05-03

**GENERAL ORDINANCE AMENDING CHAPTER 53:
Stormwater Management Department, Section 53.70 Enforcement
of 53.10, 53.20, 53.30 and 53.40 of the City of Fort Wayne, Indiana
Code of Ordinances
Sub-Sections E and F approved and added**

G-09-05-08

**AN ORDINANCE amending Chapter 51 of the City of Fort
Wayne Code of Ordinances
Chapter 51 revised rates are approved**

PUBLIC WORKS COMMITTEE

*Karen E. Goldner- Chair
Marty Bender - Co-Chair
All Council Members*

No Ordinances or Resolutions up for introduction

CITY UTILITIES COMMITTEE

Mitch Harper - Chair
Tim Pape- Co-Chair
All Council Members

ACTION

No Ordinances or Resolutions up for introduction

A DECLARATORY RESOLUTION designating an “Economic Revitalization Area” under I.C. 6-1.1-12.1 for property commonly known as 3401 McArthur Drive, Fort Wayne, Indiana 46809 (Quoin Enterprises, LLC d/b/a Labeca, LLC)

WHEREAS, Petitioner has duly filed its petition dated April 30, 2009 to have the following described property designated and declared an “Economic Revitalization Area” under Sections 153.13-153.24 of the Municipal Code of the City of Fort Wayne, Indiana, and

I.C. 6-1.1-12.1, to wit:

Attached hereto as “Exhibit A” as if a part herein;

and

WHEREAS, Common Council has confirmed an Economic Revitalization Area under Confirming Resolution R-42-07 for petitioner for property commonly known as 3118 Ferguson Road; and

WHEREAS, petitioner has installed new manufacturing equipment for which deductions from assessed valuation have been applied; and

WHEREAS, petitioner requests that this manufacturing equipment for which deductions from assessed valuation have been applied be relocated to 3401 McArthur Drive and the equipment shall be eligible for the remaining deductions from assessed valuation, under I.C. 6-1.1-12.1-4.6; and

WHEREAS, said project will create ten full-time and ten part-time, permanent jobs for a total new, annual payroll of \$675,000, with the average new annual job salary being \$33,750 and retain 62 full-time and four part-time, permanent jobs for a total current annual payroll of \$2,035,000, with the average current, annual job salary being \$30,833; and

WHEREAS, the total estimated project cost is \$2,300,000; and

WHEREAS, the total estimated cost of the equipment to be relocated is \$675,658; and

WHEREAS, it appears the said petition should be processed to final determination

in accordance with the provisions of said Division 6.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That, subject to the requirements of Section 6, below, the property hereinabove described is hereby designated and declared an “Economic Revitalization Area” under I.C. 6-1.1-12.1. Said designation shall begin upon the effective date of the Confirming Resolution referred to in Section 6 of this Resolution and shall terminate on December 31, 2011, unless otherwise automatically extended in five year increments per I.C. 6-1.1-12.1-9.

SECTION 2. That, upon adoption of the Resolution:

- (a) Said Resolution shall be filed with the Allen County Assessor;
- (b) Said Resolution shall be referred to the Committee on Finance requesting a recommendation from said committee concerning the advisability of designating the above area an “Economic Revitalization Area”;
- (c) Common Council shall publish notice in accordance with I.C. 6-1.1-12.1-2.5 and I.C. 5-3-1 of the adoption and substance of this resolution and setting this designation as an “Economic Revitalization Area” for public hearing;
- (d) In accordance with I.C. 6-1.1-12.1-4.6 that Common Council shall publish notice of the adoption and substance of this resolution and set this designation as an Economic Revitalization Area for public hearing;
- (e) Common Council shall notify each taxing unit within the original and the new economic revitalization area in accordance with I.C. 6-1.1-12.1-4.6.

SECTION 3. That, said designation of the hereinabove described property as an “Economic Revitalization Area” shall apply to both a deduction of the assessed value of real estate and personal property for new manufacturing and information technology equipment.

SECTION 4. That, the estimate of the number of individuals that will be employed or whose employment will be retained and the estimate of the annual salaries of those individuals and the estimate of the value of redevelopment or rehabilitation and the estimate of the value of new manufacturing and information technology equipment, all contained in Petitioner’s Statement of Benefits, are reasonable and are benefits that can be reasonably expected to result from the proposed described redevelopment or

rehabilitation and from the installation of new manufacturing and information technology equipment.

SECTION 5. That, the current year approximate tax rates for taxing units within the City would be:

- (a) If the proposed development does not occur, the approximate current year tax rates for this site would be \$2.6400/\$100.
- (b) If the proposed development does occur and no deduction is granted, the approximate current year tax rate for the site would be \$2.6400/\$100 (the change would be negligible).
- (c) If the proposed development occurs and a deduction percentage of fifty percent (50%) is assumed, the approximate current year tax rate for the site would be \$2.6400/\$100 (the change would be negligible).
- (d) If the proposed new manufacturing equipment is not installed, the approximate current year tax rates for this site would be \$3.0874/\$100.
- (e) If the proposed new manufacturing equipment is installed and no deduction is granted, the approximate current year tax rate for the site would be \$3.0874/\$100 (the change would be negligible).
- (f) If the proposed new manufacturing equipment is installed and a deduction percentage of eighty percent (80%) is assumed, the approximate current year tax rate for the site would be \$3.0874/\$100 (the change would be negligible).
- (g) If the proposed new information technology equipment is not installed, the approximate current year tax rates for this site would be \$3.0874/\$100.
- (h) If the proposed new information technology equipment is installed and no deduction is granted, the approximate current year tax rate for the site would be \$3.0874/\$100 (the change would be negligible).
- (i) If the proposed new information technology equipment is installed and a deduction percentage of eighty percent (80%) is assumed, the approximate current year tax rate for the site would be \$3.0874/\$100 (the change would be negligible).

SECTION 6. That, this Resolution shall be subject to being confirmed, modified and confirmed, or rescinded after public hearing and receipt by Common Council of the above described recommendations and resolution, if applicable.

SECTION 7. That, pursuant to I.C. 6-1.1-12.1, it is hereby determined that the deduction from the assessed value of the real property shall be for a period of ten years, and the deduction from the assessed value of the new manufacturing and information technology equipment shall be for a period of ten years.

SECTION 8. That, pursuant to I.C. 6-1.1-12.1-4.6, the new manufacturing equipment located at 3118 Ferguson Road for which deductions from assessed valuation have already been applied be relocated to 3401 McArthur Drive. The new manufacturing equipment shall remain eligible for the remaining deductions from assessed valuation to which it was previously entitled.

SECTION 9. That, the benefits described in the Petitioner’s Statement of Benefits can be reasonably expected to result from the project and are sufficient to justify the applicable deductions.

SECTION 10. That, the taxpayer is non-delinquent on any and all property tax due to jurisdictions within Allen County, Indiana.

SECTION 11. That, pursuant to I.C. 6-1.1-12.1-12 et al, any property owner that has received a deduction under section 3 or 4.5 of this chapter may be required to repay the deduction amount as determined by the county auditor in accordance with section 12 of said chapter if the property owner ceases operations at the facility for which the deduction was granted and if the Common Council finds that the property owner obtained the deduction by intentionally providing false information concerning the property owner’s plans to continue operation at the facility.

SECTION 12. That, this Resolution shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Member of Council

APPROVED AS TO FORM AND LEGALITY

Carol Taylor, City Attorney

A CONFIRMING RESOLUTION designating an “Economic Revitalization Area” under I.C. 6-1.1-12.1 for property commonly known as 3401 McArthur Drive, Fort Wayne, Indiana 46809 (Quoin Enterprises, LLC d/b/a Labeca, LLC)

WHEREAS, Common Council has previously designated and declared by Declaratory Resolution the following described property as an “Economic Revitalization Area” under Sections 153.13-153.24 of the Municipal Code of the City of Fort Wayne, Indiana, and I.C. 6-1.1-12.1, to wit:

Attached hereto as “Exhibit A” as if a part herein; and

WHEREAS, Common Council has confirmed an Economic Revitalization Area under Confirming Resolution R-42-07 for petitioner for property commonly known as 3118 Ferguson Road; and

WHEREAS, petitioner has installed new manufacturing equipment for which deductions from assessed valuation have been applied; and

WHEREAS, petitioner requests that this manufacturing equipment for which deductions from assessed valuation have been applied be relocated to 3401 McArthur Drive and the equipment shall be eligible for the remaining deductions from assessed valuation, under I.C. 6-1.1-12.1-4.6; and

WHEREAS, said project will create ten full-time and ten part-time, permanent jobs for a total additional annual payroll of \$675,000, with the average new annual job salary being \$33,750 and retain 62 full-time and four part-time, permanent jobs for a current annual payroll of \$2,035,000, with the average current annual job salary being \$30,833; and

WHEREAS, the total estimated project cost is \$2,300,000; and

WHEREAS, the total estimated cost of the equipment to be relocated is \$675,658; and

WHEREAS, a recommendation has been received from the Committee on Finance concerning said Resolution; and

WHEREAS, notice of the adoption and substance of said Resolution has been

published in accordance with I.C. 6-1.1-12.1-2.5 and I.C. 5-3-1 and a public hearing has been conducted on said Resolution; and

WHEREAS, each taxing unit within the original and the new economic revitalization areas have been notified of the proposed resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That, the Resolution previously designating the above described property as an "Economic Revitalization Area" is confirmed in all respects.

SECTION 2. That, the hereinabove described property is hereby declared an "Economic Revitalization Area" pursuant to I.C. 6-1.1-12.1, said designation to begin on the effective date of this Resolution and shall terminate on December 31, 2011, unless otherwise automatically extended in five year increments per I.C. 6-1.1-12.1-9.

SECTION 3. That, said designation of the hereinabove described property as an "Economic Revitalization Area" shall apply to a deduction of the assessed value of real estate and personal property for new manufacturing and information technology equipment.

SECTION 4. That, the estimate of the number of individuals that will be employed or whose employment will be retained and the estimate of the annual salaries of those individuals and the estimate of redevelopment or rehabilitation and estimate of the value of the new manufacturing and information technology equipment, all contained in Petitioner's Statement of Benefits are reasonable and are benefits that can be reasonably expected to result from the proposed described installation of the new manufacturing and information technology equipment.

SECTION 5. The current year approximate tax rates for taxing units within the City would be:

- (a) If the proposed development does not occur, the approximate current year tax rates for this site would be \$2.6400/\$100.
- (b) If the proposed development does occur and no deduction is granted, the approximate current year tax rate for the site would be \$2.6400/\$100 (the change would be negligible).
- (c) If the proposed development occurs, and a deduction percentage of fifty percent (50%) is assumed, the approximate current year tax rate for the site would be \$2.6400/\$100 (the change would be negligible).

- (d) If the proposed new manufacturing equipment is not installed, the approximate current year tax rates for this site would be \$3.0874/\$100.
- (e) If the proposed new manufacturing equipment is installed and no deduction is granted, the approximate current year tax rate for the site would be \$3.0874/\$100 (the change would be negligible).
- (f) If the proposed new manufacturing equipment is installed and a deduction percentage of eighty percent (80%) is assumed, the approximate current year tax rate for the site would be \$3.0874/\$100 (the change would be negligible).
- (g) If the proposed new information technology equipment is not installed, the approximate current year tax rates for this site would be \$3.0874/\$100.
- (h) If the proposed new information technology equipment is installed and no deduction is granted, the approximate current year tax rate for the site would be \$3.0874/\$100 (the change would be negligible).
- (i) If the proposed new information technology equipment is installed and a deduction percentage of eighty percent (80%) is assumed, the approximate current year tax rate for the site would be \$3.0874/\$100 (the change would be negligible).

SECTION 6. That, pursuant to I.C. 6-1.1-12.1, it is hereby determined that the deduction from the assessed value of the real property shall be for a period of ten years, and that the deduction from the assessed value of the new manufacturing equipment shall be for a period of ten years.

SECTION 7. That, pursuant to I.C. 6-1.1-12.1-4.6, the new manufacturing equipment located at 3118 Ferguson Road for which deductions from assessed valuation have already been applied be relocated to 3401 McArthur Drive. The new manufacturing equipment shall remain eligible for the remaining deductions from assessed valuation to which it was previously entitled.

SECTION 8. That, the benefits described in the Petitioner's Statement of Benefits can be reasonably expected to result from the project and are sufficient to justify the applicable deductions.

SECTION 9. For new manufacturing and information technology equipment, a deduction application must contain a performance report showing the extent to which there has been compliance with the Statement of Benefits form approved by the Fort Wayne

Common Council at the time of filing. This report must be submitted to the Allen County Auditor's Office, and the City of Fort Wayne's Community Development Division and must be included with the deduction application. For subsequent years, the performance report must be updated and submitted along with the deduction application at the time of filing.

SECTION 10. For real property, a deduction application must contain a performance report showing the extent to which there has been compliance with the Statement of Benefits form approved by the Fort Wayne Common Council at the time of filing. This report must be submitted to the Allen County Auditor's Office and the City of Fort Wayne's Community Development Division and must be included in the deduction application. For subsequent years, the performance report must be updated each year in which the deduction is applicable at the same time the property owner is required to file a personal property tax return in the taxing district in which the property for which the deduction was granted is located. If the taxpayer does not file a personal property tax return in the taxing district in which the property is located, the information must be provided by May 15.

SECTION 11. The performance report must contain the following information:

- A. The cost and description of real property improvements and/or new manufacturing and/or information technology equipment acquired.
- B. The number of employees hired through the end of the preceding calendar year as a result of the deduction.
- C. The total salaries of the employees hired through the end of the preceding calendar year as a result of the deduction.
- D. The total number of employees employed at the facility receiving the deduction.
- E. The total assessed value of the real and/or personal property deductions.
- F. The tax savings resulting from the real and/or personal property being abated.

SECTION 12. That, the taxpayer is non-delinquent on any and all property tax due to jurisdictions within Allen County, Indiana.

SECTION 13. That, pursuant to I.C. 6-1.1-12.1-12 et al, any property owner that has received a deduction under section 3 or 4.5 of this chapter may be required to repay the deduction amount as determined by the county auditor in accordance with section 12 of said chapter if the property owner ceases operations at the facility for which

the deduction was granted and if the Common Council finds that the property owner obtained the deduction by intentionally providing false information concerning the property owner's plans to continue operation at the facility.

SECTION 14. That, this Resolution shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Member of Council

APPROVED AS TO FORM A LEGALITY

Carol Taylor, City Attorney

#1171

BILL NO. G-09-05-01

Plat Book: 7B
Page No: 52

GENERAL ORDINANCE NO. G-_____

**AN ORDINANCE amending the Thoroughfare
Plan of the City Comprehensive ("Master")
Plan by vacating public right-of-way.**

WHEREAS, a petition to vacate public right-of-way within the City of Fort Wayne, Indiana, (as more specifically described below) was duly filed with the City Clerk of the City of Fort Wayne, Indiana; and

WHEREAS, Common Council of the City of Fort Wayne, Indiana, duly held a public hearing and approved said petition, as provided in I.C. 36-7-3-12.

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

SECTION 1. That the petition filed herein to vacate a public right-of-way within the City of Fort Wayne, Indiana, more specifically described as follows, to-wit:

Columbia Avenue from the west line of Lot 56 and Lot 57 to the east line of Lot 55 and Lot 110 in the vacated plat of White Oak Park Addition, as recorded in Plat Book 7B, page 52 in the Office of the Recorder, Allen County, Indiana and as vacated by Circuit Court Case #27260, dated 11/19/1956 and recorded in Auditor's Instrument #D-1325, dated 5/4/1970; and Artas Avenue from the south line of Lot 58 and Lot 109 to the south line of Columbia Avenue, in the vacated plat of White Oak Park Addition, as recorded in Plat Book 7B, page 52 in the Office of the Recorder, Allen County, Indiana and as vacated by Circuit Court Case #27260, dated 11/19/1956 and recorded in Auditor's Instrument #D-1325, dated 5/4/1970.

and which vacating amends the Thoroughfare Plan of the City Comprehensive ("Master") Plan and is hereby approved in all respects.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage, any and all necessary approval by the Mayor.

COUNCILMEMBER

APPROVED AS TO FORM AND LEGALITY:

Carol T. Taylor, City Attorney

#1172

BILL NO. G-09-05-02

Deed Record: 469
Pages 526-534

GENERAL ORDINANCE NO. G-_____

**AN ORDINANCE amending the Thoroughfare
Plan of the City Comprehensive ("Master")
Plan by vacating public right-of-way.**

WHEREAS, a petition to vacate public right-of-way within the City of Fort Wayne, Indiana, (as more specifically described below) was duly filed with the City Clerk of the City of Fort Wayne, Indiana; and

WHEREAS, Common Council of the City of Fort Wayne, Indiana, duly held a public hearing and approved said petition, as provided in I.C. 36-7-3-12.

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

SECTION 1. That the petition filed herein to vacate a public right-of-way within the City of Fort Wayne, Indiana, more specifically described as follows, to-wit:

Iroquois Court – 0.331 acres (14,400 square feet)

Part of the Southwest Quarter of Section 15, Township 30 North Range 12 East of the Second Principal Meridian, Wayne Township in Allen County, Indiana, more particularly described as follows:

Commencing at the intersection of the West right-of-way line of Brooklyn Avenue with the South right-of-way line of Nuttman Avenue in the City of Fort Wayne, Indiana; thence South 89 degrees 32 minutes 29 seconds West (bearings based on the deed bearing of the West right-of-way line of Brooklyn Avenue and basis of bearings to follow), a distance of 460.50 feet along the South right-of-way line of said Nuttman Avenue to the East right-of-way line of Iroquois Court, also being the Point of Beginning of the herein described tract; thence South 00 degrees 27 minutes 31 seconds East, a distance of 288.0 feet along said East right-of-way line to the North right-of-way line of Cheyenne Drive; thence South 89 degrees 32 minutes 29 seconds West, a distance of 50.0 feet along said North right-of-way line to the West right-of-way line of said Iroquois Court; thence North 00 degrees 27 minutes 31 seconds West, a distance of 288.0 feet along said West right-of-way line to the South right-of-way line of said Nuttman Avenue; thence North 89 degrees 32 minutes 29 seconds East, a distance of 50.0 feet along said South right-of-way line to the Point of Beginning, containing 0.331 acres (14,400 square feet), more or less; and

A portion of Cheyenne Drive – 0.343 acres (14,929 square feet)

Part of the Southwest Quarter of Section 15, Township 30 North Range 12 East of the Second Principal Meridian, Wayne Township in Allen County, Indiana, more particularly described as

follows:

Commencing at the intersection of the West right-of-way line of Brooklyn Avenue with the South right-of-way line of Nuttman Avenue in the City of Fort Wayne, Indiana; thence South 89 degrees 32 minutes 29 seconds West (bearings based on the deed bearing of the West right-of-way line of Brooklyn Avenue and basis of bearings to follow), a distance of 460.50 feet along the South right-of-way line of said Nuttman Avenue to the East right-of-way line of Iroquois Court; thence

South 00 degrees 27 minutes 31 seconds East, a distance of 288.0 feet along said East right-of-way line to the North right-of-way line of Cheyenne Drive, also being the Point of Beginning of the herein described tract; thence continuing South 00 degrees 27 minutes 31 seconds East, a distance of 78.00 feet along the Southerly extension of said East right-of-way line to the South right-of-way line of Cheyenne Drive; thence South 89 degrees 32 minutes 29 seconds West, a distance of 191.40 feet along said South right-of-way line to the East line of a 2.82 acre parcel described in Deed Book 596, pages 429-431 as found in the Office of the Recorder of Allen County, Indiana; thence North 00 degrees 27 minutes 31 seconds West, a distance of 78.00 feet along said East line to the North right-of-way of Cheyenne Drive; thence North 89 degrees 32 minutes 29 seconds East, a distance of 191.40 feet along said North right-of-way line to the Point of Beginning, containing 0.343 acres (14,929 square feet), more or less.

and which vacating amends the Thoroughfare Plan of the City Comprehensive ("Master") Plan

and is hereby approved in all respects.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage, any and all necessary approval by the Mayor.

COUNCILMEMBER

APPROVED AS TO FORM AND LEGALITY:

Carol T. Taylor, City Attorney

BILL NO. R-09-05-04

RESOLUTION NO R- _____

A RESOLUTION that will amend the Maumee River Basin Commission's updated Flood Mitigation Plan to be the official plan of the City of Fort Wayne, so as to ensure public safety and awareness.

WHEREAS, Common Council previously passed R-72-08 September 2, 2008 adopting the Maumee River Basin Commission's Flood Mitigation Plan; and

WHEREAS, the FLOOD MITIGATION MASTER PLAN recommends many activities that will protect the people and property affected by flooding;

WHEREAS, the adoption of these full page amendments to the Maumee River Basin Commission Flood Mitigation Plan as required by the voluntary participation in the National Flood Insurance Program's (NFIP) Community Rating System (CRS).

NOW THEREFORE BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, ALLEN COUNTY, INDIANA:

SECTION 1. The amended Flood Mitigation Master Plan is hereby adopted as the official plan of the City of Fort Wayne.

SECTION 2. The Maumee River Basin Commission, in association with the City of Fort Wayne Flood Control Department will provide updates annually to the web based Flood Mitigation Master Plan and this information will be available to the Council December 30th of each year with the participation and continuation of the Community Rating System (CRS).

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol T. Taylor, City Attorney

**GENERAL ORDINANCE AMENDING CHAPTER 53:
STORMWATER MANAGEMENT DEPARTMENT, SECTION
53.70 Enforcement of §§ 53.10, 53.20, 53.30 and 53.40 OF
THE CITY OF FORT WAYNE, INDIANA CODE OF
ORDINANCES.**

**NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL
OF THE CITY OF FORT WAYNE, INDIANA:**

SECTION 1. That Chapter 53: Stormwater Management Department, Section
53.70 Enforcement of §§ 53.10, 53.20, 53.30 and 53.40 of the City of Fort Wayne,
Indiana, Code of Ordinances is hereby amended as follows:

CHAPTER 53: STORMWATER MANAGEMENT DEPARTMENT

Section

§53.70 ENFORCEMENT OF §§ 53.10, 53.20, 53.30 AND 53.40

- (A) Enforcement Actions Generally.** Enforcement of this Chapter shall be subject to the severity of the infraction and the responsible party's efforts to comply as determined by the Department of Stormwater Management. The Department shall reserve the right to determine the level of enforcement on a case-by-case basis. Enforcement actions shall be initiated by the serving of a Notice of Violation and may include any one or more of the following:
- (1) Verbal warning to the responsible party/parties to make corrections.
 - (2) Written warning to the responsible party/parties to make corrections within a specified period of time. The period of time shall take into account issues such as the severity of the problem, pending weather, seasonal conditions, and the level of effort necessary to correct the problem.
 - (3) Warning of Non-Compliance with directions to the responsible party/parties that site conditions require immediate action.
 - (4) The performance of monitoring, analysis, and reporting.
 - (5) Stop Work Order.
 - (6) Suspension of access to the stormwater drainage system.
 - (7) Civil Penalties and fines.
- (B) Restoration and Remediation.** If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the responsible party/parties fail to remediate or restore within the established deadline, the work will be done

by a designated governmental agency or a contractor and the expense thereof shall be charged to the responsible party/parties.

- (C) **Emergency Suspensions.** The Department of Stormwater Management may, without prior notice, suspend access to the stormwater drainage system to a person or entity when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the stormwater drainage system or Waters of the United States. If a responsible party fails to comply with a suspension order issued in an emergency, the Department of Stormwater Management may take such steps as deemed necessary to prevent or minimize damage to the stormwater drainage system or Waters of the United States, or to minimize danger to persons.
- (D) **Suspension of Access to the Stormwater Drainage System Due to the Detection of Illicit Discharge.** Any person or entity discharging to the stormwater drainage system in violation of this Chapter may have their stormwater drainage system access terminated if such termination would abate or reduce an illicit discharge. The Board of Stormwater Management will notify a responsible party of the proposed termination of its MS4 access.
- (E) **Injunctive Relief.** It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of the Chapter. If a person has violated or continues to violate the provisions of this Chapter, the authorized enforcement agency may petition for a temporary, preliminary or permanent restraining order or injunction enjoining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.
- (F) **Alternate Compensatory Action.** In lieu of enforcement proceedings, penalties, and remedies authorized by this Chapter, the Board of Stormwater Management, at its sole discretion, may impose upon a responsible party violating this Chapter alternative compensatory action, such as storm drain stenciling, hosting of or attendance at compliance workshops, participation in waterway cleanup activities or other compensatory actions as may be agreed upon by the Board of Stormwater Management and the violator and that further the goals of Fort Wayne's approved Stormwater Quality Management Plan.
- (G) **Civil Penalty.** Any person that has violated or continues to violate this Chapter shall be liable to civil penalties to the fullest extent of the law, and shall be subject to a fine of up to \$2,500 dollars per violation per day. Each and every day that the violation exists shall constitute a separate offense.

(H) Fees and Costs. The Department of Stormwater Management may recover all reasonable attorneys' fees, court costs, consultant costs and other expenses associated with enforcement of this Chapter, including sampling and monitoring expenses to the extent permitted by law.

(I) Remedies Not Exclusive. The remedies listed in this Chapter are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Department of Stormwater Management to seek cumulative remedies.

(J) Authorized Enforcement Agencies. The Board of Stormwater Management, Water Pollution Control Maintenance Department, Division of Public Works and City Utilities, Department of Code Enforcement, and Fire Department of the City of Fort Wayne, or its subcontractors shall be the agencies authorized to enforce Chapter 53 of the Fort Wayne Municipal Code.

(K) Appeal of Notice of Violation. Any person receiving a Notice of Violation may appeal the determination to the Board of Stormwater Management. The notice of appeal must be received within thirty (30) days from the date of the Notice of Violation. Hearing on the appeal before the Board or its hearing officer shall take place within thirty (30) days from the date of receipt of the notice of appeal. The decision of the Board or its hearing officer shall be final, subject to any right of a person to seek judicial review in a court of competent jurisdiction.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Taylor, City Attorney

BILL NO. G-09-05-08

GENERAL ORDINANCE NO. _____

**AN ODINANCE AMENDING CHAPTER 51 OF
THE CITY OF FORT WAYNE CODE OF ORDINANCES**

WHEREAS, pursuant to Indiana Code 36-9-23-25, the Common Council of the City of Fort Wayne Indiana has enacted a User Charge System and a Sewer Use Ordinance as contained in Chapter 51 of the Fort Wayne Code of Ordinances; and

WHEREAS, the Fort Wayne Code of Ordinances calls for an annual review of the Water Pollution Control Utility’s current service charges and surcharges by the Board of Public Works to determine whether said charges provide sufficient revenue to offset the cost of all treatment works operation and maintenance provided by the Utility, including the cost of management, system repair and replacement, debt retirement and other costs incidental to the Utility operation; and

WHEREAS, State law (I.C. 8-1.5-3-8) states that rates and charges of municipally owned utilities are unlawful if they are too low to produce income sufficient to maintain the utility property in a sound physical and financial condition to render adequate and efficient services, and

WHEREAS, the City of Fort Wayne became subject to a Consent Decree enforceable April 1, 2008, wherein the City must construct certain facilities at certain times over the next 18 years to achieve certain specified levels of control over combined sewer overflows, must avoid sanitary sewer overflows and must report timely on progress and events or pay per diem fines and penalties for failure to meet deadlines, milestones or for failure to provide sufficient maintenance; and

WHEREAS, the Water Pollution Control Utility has developed plans for investments in high value combined sewer system projects, capacity building in the sanitary sewer interceptors for future economic growth and development, a continuation of pipeline

rehabilitation work and preventative maintenance programs for maintenance sufficiency;
and

WHEREAS, the Plant, sewer capacity and water quality capital projects have been incorporated into a long-term plan for sewer improvements -- the first six years of which are included in the Sewage Works Capital Improvement Program; and

WHEREAS, upon review of the Sewage Works Capital Improvement Program, the Board of Public Works of the City of Fort Wayne, In accordance with I.C. 36-9-23-25 and Section 51.079 of the Fort Wayne Code of Ordinances, now finds that existing rates and charges for the use of and services rendered by the Water Pollution Control Utility do not provide sufficient revenue to:

- (a) Pay all expenses incidental to the operation of the sewage works as defined in 36-9-1-8 , including legal expenses, maintenance costs, operating charges, repairs, lease rentals, and interest charges on bonds or other obligations; and
- (b) Provide the sinking fund required by I.C. 36-9-23-21 for proposed debt; and
- (c) Provide adequate money for improving and replacing the works, specifically those projects that will contribute toward combined sewer system solutions and treatment plant improvements; and

WHEREAS, a series of rate increases in treatment and conveyance rates as listed in "Exhibit A" and changes in other rates and fees also listed in Exhibit A are needed to fund the sewer CIP projects for the next six years and meet the requirements of I.C. 36-9-23-25; and

WHEREAS, the Board of Public Works of the City of Fort Wayne did, on May 6, 2009, resolve that it is in the best interest of the Fort Wayne Water Pollution Control Utility, in order to provide income sufficient to maintain the utility property in a sound physical and financial condition to render adequate and efficient service to its users while implementing the recommendations of the Sewer Advisory Group and requirements of the Consent

Decree that the sewage rates charged to all Sewage Works users be changed as listed in Exhibit A for the years listed effective July 1st of each respective year and recommended that such increases be adopted by Common Council by way of amendment to Chapter 51 of the Fort Wayne Code of Ordinances; and

WHEREAS, the Common Council now finds the sewer rates for the next 5 years are insufficient pursuant to I.C. 36-9-23-25 to meet the needs of the Sewage Works Utility, including capital projects planned for the next 6 years; and

WHEREAS, the Common Council of the City of Fort Wayne now finds it in the best interest of the Fort Wayne Water Pollution Control Utility, in order to provide income sufficient to maintain the utility property in a sound physical and financial condition to render adequate and efficient service to its users while implementing requirements of the Consent Decree and the Utility's approved Sewage Works 6-year Capital Improvements Plan, that the sewage rates be changed as listed in Exhibit A for the years listed effective July 1st of each respective year..

NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA;

SECTION 1. That the following sections or subsections of Chapter 51 of the Fort Wayne Code of Ordinances be amended as follows for the **first** year (2009) of five year approved rate changes with all other sections to remain unchanged:

51.065 CHARGES BASED ON WATER USAGE/FLAT CHARGES

The charges made for sewerage service rendered to each lot, parcel of real estate or building having any connection with the city's sewerage system or otherwise discharging sewage into the system, either directly or indirectly, shall be based upon the quantity of water presumed to enter the public sewers after being used in or on the property, as the quantity is measured by the water meter or meters there in use by the city's water utility, except as herein otherwise provided. Flat charges shall be assessed on a monthly basis.

For the purposes of this chapter, a month shall constitute 25-35 days. Service periods falling outside this parameter shall be prorated.

51.066 WATER OBTAINED FROM SOURCES OTHER THAN CITY'S WATER UTILITY

Where the property obtains any part or all of the water used from sources other than the city's water utility, the owner or the tenant may be required by the city to install and maintain at the user's own expense a meter or meters acceptable to the city for the quantity of water obtained from these other sources. Once installed, no such meter may be bypassed for any reason.

51.067 EXEMPT WATER-GENERAL

Where a significant portion of the metered water does not and cannot enter the sewerage system, either directly or indirectly, the person having charge of the property may request permission from the city to install at the user's expense either an approved meter or meters to determine the quantity of water that cannot enter the sewerage system or an approved sewage-measuring device or devices to determine the volume of sewage that actually enters the sewerage system. In any case the service charge shall be based on the quantity of water that can or actually does enter the public sewers but in no case shall it be less than the minimum charge for the class of user served. Plans and specifications for all such meters shall be submitted to the Superintendent of the Water Pollution Control Plant and approved prior to installation.

51.068 METERING OF SEWAGE

The city may require a person to install and maintain at the user's expense an approved device to measure directly the volumes of wastes discharged to the sewerage system if those volumes cannot otherwise be determined from the metered-water consumption records. The city shall inspect and approve such installation and no such services, once installed, shall be removed without the city's approval.

51.068.5 DEPOSIT TO ENSURE PAYMENT OF SEWER FEES; REFUNDS; FORFEITURES; USES

(A) Pursuant to IC 26-9-23-28, City Utilities may require the owner, lessee or user of

property served by the Utility to pay a deposit to ensure payment of sewer fees.

(B) The deposit required shall equal the estimated average payment due from the property served by the Utility for a three month period. Deposits shall be retained in a separate fund.

(C) The deposit, less any outstanding penalties and service fees, shall be refunded to the depositor after a notarized statement from the depositor that as of a certain date the property being served:

(1) Has been conveyed or transferred to another person; or

(2) No longer uses or is connected with any part of the municipal sewage system.

A statement under division (C) (1) must include the name and address of the person to whom the property is conveyed or transferred.

(D) If a depositor fails to satisfy costs and fees within 60 days after the termination of his use or ownership of the property served, the deposit and all accrued interest is forfeited. The forfeited amount shall be applied to the depositor's outstanding fees. Any excess that remains due after application of the forfeiture may be collected in the manner set out in 51.099 and 51.100 herein. A deposit may be used to satisfy all or part of any judgment awarded the municipality under this chapter.

(E) A deposit made under this section that has remained unclaimed by the depositor for more than seven years after the termination of the services for which the deposit was made becomes the property of City Utilities.

51.069 RESIDENTIAL USER CHARGES

(A) *In-city service and billing charges.*

(1) *Service charge.* Charges for services rendered to residents within the

corporate boundaries of the City of Fort Wayne shall be based on metered water consumption, unless otherwise measured, in accordance with the following charges for this classification of service:

	Per 100 cubic feet
Treatment	\$1.3970
Conveyance and Collection	<u>\$1.4751</u>
Total User Charge	\$2.8721

(2) *Billing charge.* Residential users inside the city shall be billed a monthly billing fee of \$4.08.

(B) *Outside city service and billing charges.*

(1) *Service charges.* Charges for services rendered to residents outside the corporate boundaries of the City of Fort Wayne shall be based on metered water consumption, unless otherwise measured, in accordance with the following charges for this classification of service:

	Per 100 cubic feet
Treatment	\$1.7463
Conveyance and Collection	<u>\$1.8439</u>
Total User Charge	\$3.5902

(2) *Billing charge.* Residential users outside the city shall be billed a monthly billing fee of \$5.10.

(C) *Annexation areas.* Hereinafter, the terms “inside city” or “outside city” shall be read to distinguish the users located within or outside the corporate boundaries of the City of Fort Wayne. Users designated as outside city who are within an annexation area shall, upon the effective date of annexation, be designated as inside the city and inside city rates and charges shall apply.

(D) *Flat user charges.*

(1) In the event that any user in this classification is not a metered water

customer, there shall be imposed flat charge rates as follows:

<u>Classification of Residential User</u>	<u>Monthly Flat Charge (2)</u>	
	<u>Inside City</u>	<u>Outside City</u>
Single-Family Dwelling	\$32.80	\$41.00
Multi-Family Dwelling	To be estimated by city	

(2) Monthly flat charges for multi-family dwellings shall be based on the number of family units accommodated by the system, multiplied by the single-family dwelling monthly charges. A 25% surcharge shall apply to the rates charged to users outside the city.

(3) The Utility shall retain documentation supporting its estimates and the billings based thereon. Such determination of billings may be reviewed and adjusted by the Utility at any time. However, no adjustment, additional charge or refund may be made more than six years after the due date of the billing sought to be adjusted.

51.070 INDUSTRIAL USER CHARGES

(A) *Service charge.* Charges for services rendered shall be based on metered water consumption, unless otherwise measured, in accordance with the following charges for this classification of service:

	Per 100 cubic feet	
	<u>Inside City</u>	<u>Outside City</u>
Treatment	\$1.3970	\$1.7463
Conveyance and Collection	<u>\$1.4751</u>	<u>\$1.8439</u>
Total User Charge	\$2.8721	\$3.5902

(B) *Flat user charge.* In the event any user in this classification is not a metered water customer, there shall be imposed a flat charge estimated by the city. A 25% surcharge shall apply to the rate charged to such users located outside the city.

(C) *Other industrial user charges.*

- (1) *Billing charge.* Monthly billing charge – per bill:
 - (a) Inside city: \$4.08
 - (b) Outside city: \$5.10

(2) *Excess strength of waste.* In the event any user in this classification contributes waste having strength of sewage in excess of domestic waste characteristics, as herein defined, a surcharge based on the following unit process charges will be in effect for all waste found to be in excess of limitations:

Dollars Per Pound

Suspended Solids – (SS)	\$0.0968
Biochemical Oxygen Demand – (BOD)	\$0.1235
Phosphorus – (P)	\$1.4575
Ammonia – (NH-3)	\$0.3748

(3) *Food Service Establishments.* Food Service Establishments as defined in 51.001 and industrial users that are engaged in or have on-site contractors that are engaged in the preparation, processing or serving of cooked food, cooked food products and beverages as well as any other types of food manufacturing or food preparation enterprises such as, but not limited to, commissaries, commercial kitchens and caterers shall pay an extra-strength surcharge of \$0.9248 per 100 cubic feet of sewage.

51.071 COMMERCIAL USER CHARGES

(A) *Service charge.* Charges for services rendered shall be based on metered water consumption, unless otherwise measured, in accordance with the following charges for this classification of service:

	Per 100 cubic feet	
	<u>Inside City</u>	<u>Outside City</u>
Treatment	\$1.3970	\$1.7463
Conveyance and Collection	\$1.4751	\$1.8439
Total User Charge	\$2.8721	\$3.5902

(B) *Flat user charge.* In the event any user in this classification is not a metered water customer, there shall be imposed a flat charge estimated by the city. A 25% surcharge shall apply to the rate charged to such users located outside the city.

(C) *Other commercial user charges.*

- (1) *Billing charge.* Monthly billing charge – per bill:
 - (a) Inside city: \$4.08
 - (b) Outside city: \$5.10

(2) *Excess strength of waste.* In the event any user in this classification contributes waste having strength of sewage in excess of domestic waste characteristics, as herein defined, such user will be charged for surveillance, as set forth elsewhere herein, and surcharges, as established for industrial users, except as set forth in the following paragraph.

(3) *Food Service Establishments.* Food Service Establishments as defined in 51.001 and commercial users that are engaged in or have on-site contractors that are engaged in the preparation, processing or serving of cooked food, cooked food products and beverages as well as any other types of food manufacturing or food preparation enterprises such as, but not limited to, commissaries, commercial kitchens and caterers shall pay an extra-strength surcharge of \$0.9248 per 100 cubic feet of sewage.

51.072 INSTITUTIONAL USER CHARGES

(A) *Service charge.* Charges for services rendered shall be based on metered water consumption, unless otherwise measured, in accordance with the following charges for this classification of service:

	Per 100 cubic feet	
	<u>Inside City</u>	<u>Outside City</u>
Treatment	\$1.3970	\$1.7463
Conveyance and Collection	\$1.4751	\$1.8439
Total User Charge	\$2.8721	\$3.5902

(B) *Flat user charge.* In the event any user in this classification is not a metered water customer, there shall be imposed a flat charge estimated by the city. A 25% surcharge shall apply to the rate charged to such users located outside the city.

(C) *Other institutional user charges.*

(1) *Billing charge.* Monthly billing charge – per bill:

(a) Inside city: \$4.08

(b) Outside city: \$5.10

(2) *Excess strength of waste.* In the event any user in this classification contributes waste having strength of sewage in excess of domestic waste characteristics, as herein defined, such user will be charged for surveillance, as set forth elsewhere herein, and surcharges, as established for industrial users.

(3) *Food Service Establishments.* Food Service Establishments as defined in 51.001 and institutional users that are engaged in or have on-site contractors that are engaged in the preparation, processing or serving of cooked food, cooked food products and beverages as well as any other types of food manufacturing or food preparation enterprises such as, but not limited to, commissaries, commercial kitchens and caterers shall pay an extra-strength surcharge of \$0.9248 per 100 cubic feet of sewage.

51.073 GOVERNMENTAL USER CHARGES

(A) *Service charge.* Charges for services rendered shall be based on metered water consumption, unless otherwise measured, in accordance with the following charges for this classification of service:

	Per 100 cubic feet	
	<u>Inside City</u>	<u>Outside City</u>
Treatment	\$1.3970	\$1.7463
Conveyance and Collection	<u>\$1.4751</u>	<u>\$1.8439</u>
Total User Charge	<u>\$2.8712</u>	<u>\$3.5902</u>

(B) *Flat user charge.* In the event any user in this classification is not a metered

water customer, there shall be imposed a flat charge estimated by the city. A 25% surcharge shall apply to the rate charged to such users located outside the city.

(C) *Other governmental user charges.*

(1) *Billing charge.* Monthly billing charge – per bill:

(a) Inside city: \$4.08

(b) Outside city: \$5.10

(2) *Excess strength of waste.* In the event any user in this classification contributes waste having strength of sewage in excess of domestic waste characteristics, as herein defined, such user will be charged for surveillance, as set forth elsewhere herein, and surcharges, as established for industrial users.

(3) *Food Service Establishments.* Food Service Establishments as defined in 51.001 and governmental users that are engaged in or have on-site contractors that are engaged in the preparation, processing or serving of cooked food, cooked food products and beverages as well as any other types of food manufacturing or food preparation enterprises such as, but not limited to, commissaries, commercial kitchens and caterers shall pay an extra-strength surcharge of \$0.9248 per 100 cubic feet of sewage.

51.074 WHOLESALE CONTRACT CUSTOMERS – UNIT AND OTHER CHARGES

In the event the city consummates a contract to serve as a regional treatment plant for any other municipality, private sewage utility or sewer district, either contiguous to the city or in its environs, said contract shall provide for the following unit charges:

(A) Volume charge.

(1) Treatment: \$1.3970 per 100 cubic feet

(B) *Variable charge (per 100 cubic feet).* A variable charge for conveyance and collections costs attributable to each contract customer's portion of the city conveyance system, and operating costs associated therewith, shall be computed by the city and added to the treatment cost to arrive at the contractee's total metered rate. Variable charges shall be approved by the Board of Public Works.

(C) *Flat charge.* In addition to the foregoing charges based on volume of sewage treated, collected and conveyed, each contract customer shall pay a monthly billing charge of \$4.08, and an appropriate monthly surveillance charge, based on the type of testing necessary according to the contractee's customer base, as established in 51.078 herein.

(D) *Excess strength of waste.* In the event a contract customer user contributes waste having a strength of sewage in excess of domestic waste characteristics, as hereinbefore defined, a surcharge based on the following unit process charges will be in effect for all waste found to be in excess of limitations:

	Dollars Per Pound
Suspended Solids – (SS)	\$0.0968
Biochemical Oxygen Demand – (BOD)	\$0.1235
Phosphorus – (P)	\$1.4575
Ammonia – (NH-3)	\$0.3748

(E) *Capital charge.* Where a contract calls for the payment of a capital charge (Allen County Institutional Power Plant), such shall be billed to the contract customer.

(F) *Capital surcharge.* In the event a contract customer delivers sewage for treatment to the city for three consecutive billing periods (approximately 90 consecutive days) which is in excess of the base volume limit guaranteed in the contract, then the customer will be subject to a capital surcharge, computed at the capital rate per 100 cubic feet in effect for outside the city customers set out elsewhere herein. The capital rate per 100 cubic feet shall be multiplied by the excess percentage of volume calculated by dividing the daily average for three billing periods by the contracted volume limit (in gallons per day).

(G) *Other provisions.* In the event sewage received pursuant to any contract entered into under this section exceeds any of the limitations imposed by this chapter, the city shall have the right to impose all limitations, charges and penalties applicable to any non-wholesale contract customer user. Each contract entered into by the city pursuant to the foregoing rate classification shall provide that the wholesale contract customer shall agree

to enact and maintain a sewer use ordinance and user charge system acceptable to the city and in conformance with the city's obligations under Sec. 204 (b) (1), Public Law 92-500 as amended and supplemented, and guidelines and regulations promulgated thereunder by the U.S. Environmental Protection Agency and 40 CFR 35-905-8, 35-928-1 and 35-928-2 and 35-935-13.

51.075 BULK WASTE CHARGES.

(A) *Industrial:* For all industrial waste suitable for disposal which has been delivered by an approved Water Hauler to City's plant - \$91.34 per load. For purposes of computing charges hereunder, a **LOAD** is defined as 1,000 gallons of tank capacity or any fraction thereof.

(B) *Domestic.* For all domestic waste delivered to the city's plant by customer's truck or tank - \$54.77 per load. For purposes of computing charges hereunder, a **LOAD** is defined as 1,000 gallons of tank capacity or any fraction thereof.

(C) *Manifest.* All bulk waste loads delivered to the Water Pollution Control Plant shall be accompanied by a "Waste Hauler Manifest," the form for which will be provided by the city.

(D) *Billing charge.* All bulk waste haulers shall also be assessed a billing charge of \$4.08 per bill.

51.076 STRENGTH-OF-WASTE SURCHARGE

(A) Each user discharging wastes into the collection system shall be subject to a strength-of-wastes surcharge, in addition to other sewage service charges imposed by this chapter, based on the following minimum strength characteristics to the extent that such wastes are in concentrations greater than:

- (1) Biochemical oxygen demand of 300 milligrams per liter.
- (2) Chemical oxygen demand of 600 milligrams per liter.

- (3) Suspended solids content of 300 milligrams per liter.
- (4) Phosphorus content of 10 milligrams per liter.
- (5) Ammonia content of 25 milligrams per liter.

(B) The surcharge shall be determined as follows: The excess pounds of BOD or COD (whichever results in the higher charge) suspended solids, phosphorus and ammonia will each be computed by first multiplying the user's billing sewage volume measured in units of 100 cubic feet for the current billing period by the factor 0.0062321 and then multiplying this product by the difference between, (a) the concentrations measured in milligrams per liter, of the BOD (or COD), suspended solids, phosphorus and ammonia respectively in the user's sewage, and (b) the allowed concentrations set out in 51.076. The surcharge for each constituent will then be determined by multiplying the excess pounds of each constituent by the appropriate rate of surcharge. In the event COD measurement is used, as hereinbefore provided, 50% of the excess pounds measured will be used to compute the equivalent BOD charge.

51.077 CAPITAL IMPROVEMENT SURCHARGE

(A) All classifications of users subject to a capital improvement surcharge shall pay the applicable surcharge in addition to other sewage service charges imposed by this chapter. Capital improvement surcharges shall remain in effect until the cost of the intended installations, adjustments or improvements to the water pollution control utility has been retired and the capital improvement surcharge area has been retired.

(B) The designated capital improvement surcharge areas, the respective amount of the surcharges, and frequency of the surcharges include the following:

Capital Improvement Surcharge Area	Dollars Per ERU	Frequency
Deer Track Area (as designated by Board of Works Resolution 92-8-3-05-02)	\$47.95	Monthly

Newhaus Sewer Area \$20.00 Monthly
(as designated by Board
of Works Resolution
90-271-13)

Rothman East Area \$22.50 Monthly
(as designated by Board
of Works Resolution
92-4-20-05-03)

Southtown Center Area \$4.00 Monthly
(as designated by Board
of Works Resolution
92-5-25-05-02)

Tiernan Shed B Area \$22.50 Monthly

Upper Ely \$20.00 Monthly

There are no other capital improvement surcharge areas.

**51.078 CONTINUING SURVEILLANCE
 SAMPLING/WASTE EVALUATION CHARGES.**

All users discharging wastes into the system requiring continuing surveillance sampling and waste evaluation shall be subject to the following fixed charge to cover the costs of such services per discharge point.

(A) Monthly evaluation charges.

(1) Type 1 Evaluation: \$137.48

(2) Type 2 Evaluation: \$151.48

(B) Evaluation charges - per occurrence.

(1) Type 1 Evaluation: \$412.43

(2) Type 2 Evaluation (includes metals): \$454.43

(3) Grab compliance (FOG): \$166.86

(4) Composite compliance: \$190.00*

*Plus applicable laboratory testing charges.

51.079 ANNUAL REVIEW OF SERVICE CHARGES AND SURCHARGES; REVISION OF CHARGES AND RATES.

Prior to May 1 of each year, the Chief Financial Officer of the city utilities and an independent certified public accountant employed for that purpose shall submit to the Board of Public Works a comparison of the calculated unit cost for flow, removal of BOD, suspended solids, ammonia and phosphorus from the Water Pollution Control Plant influent during the previous year with unit charges currently in effect, from which the Board shall determine whether the current service charges and surcharges are adequate or should be changed, and to request legislative enactment of said changes by the Common Council. The methodology used in developing this cost comparison shall include:

(A) A system including the distribution of the cost of operation and maintenance of the treatment works of the WPC utility to each user class in proportion to such user's contribution to the total waste loading of the treatment works. Factors such as strength, volume and delivery flow characteristics shall be considered and included as the basis for the user's contribution to insure a proportional distribution of operation and maintenance and replacement costs to each user class.

(B) Total annual service charges and surcharges collected from each individual user class shall be deemed sufficient if said charges have generated during the prior operating period sufficient revenue to offset the cost of all treatment works operation and maintenance provided by the utility, including cost of management, system repair and replacement, debt retirement and other costs incidental to the utility operation attributable to such class.

DELINQUENT ACCOUNTS; BILLING OF SERVICE CHARGES

51.090 BILLING PERIOD.

(A) Charges for sewerage services shall be computed and billed by the General Office of the City Utilities. Bills shall be rendered approximately monthly, unless additional

billing is required to reflect customer changes, meter changes, service terminations, initial billings or is otherwise required to adjust billing cycles. For the purpose of this chapter, a month shall constitute 25-35 days. Service periods falling outside this parameter shall be prorated.

(B) Billings for sewerage service shall be rendered with and shall be due and payable on the same due date as billings for water service to the same premises, if any, and if none, then within such billing cycle as the utility may determine.

51.091 LIABILITY FOR PAYMENT; EXAMINATION OF UTILITY RECORDS.

(A) Charges for sewerage service shall be billed to the person being billed for water service, if any, unless by contract with the utility, another person assumes responsibility for payment. Notwithstanding billing to, and assumption of responsibility by any person, charges for sewerage service shall remain the responsibility of the owner of the real estate, who shall hold the utility harmless from any loss occasioned by the delinquency of the person billed, including all penalties, recording fees, attorney's fees, interest, and court costs, if any.

(B) The owner of the real estate or person billed shall have the right to examine the utility's records of billing and collection to ascertain whether such charges have been paid, and the amount thereof.

(C) Nothing herein contained shall permit any person other than the owner, or the person being billed, to inspect, examine or otherwise obtain confidential information including the payment/credit history, income, employment, finances or social security number of the person being billed.

51.092 FIRST BILLINGS.

The rates, charges and surcharges fixed in this chapter shall extend to and cover any additional premises hereafter served, without hearing or notice. If the first billing to a new user covers a period other than a full billing month, then the charges for sewerage

service for such billing shall be made in accordance with standard practice employed by the city's water utility.

51.093 CITY SUBJECT TO CHARGES.

For sewerage services rendered to the city, or any department, structure, or property, thereof, the city shall be subject to the same rates and charges herein established for other persons, or to rates and charges established in harmony herewith.

51.094 CONSOLIDATION OF ACCOUNTS.

Where an industrial, commercial or other non-residential enterprise is operating in a unified manufacturing or service arena composed of two or more contiguous parcels of real estate and is supplied with water through two or more meters, upon application by the owner or his authorized agent, a consolidation of the wagger meter readings may be made for the purpose of calculating the sewerage service charge.

51.095 NOTICE OF CAPITAL SURCHARGE.

The City Clerk shall certify a copy of Special Ordinance No. 2-233-81, enacted October 28, 1981, and all amendments thereto, heretofore or hereafter adopted, and shall record such certified copy in the Office of the Recorder of Allen County, Indiana to provide constructive notice to the owners and purchasers of real property in Adams Township and St. Joseph Township that a capital surcharge may be imposed upon properties connected to, or to be connected to, the city utility sewerage system, in those areas of said townships formerly served by sewerage system purchased or otherwise acquired by the city utility.

51.096 DELINQUENT ACCOUNTS; PENALTIES.

Charges for sewerage service levied pursuant to this chapter shall be due and payable on or before the due date stated on the bill. Any charge for sewerage and/or stormwater service not paid by the due date shall be delinquent, and may be collected, with any applied penalty, recording fees, service charges, attorney's fees, interest and court

costs, if any, in accordance with this chapter and with IC 36-9-23-31 through 36-9-23-34. A penalty of 10% of the amount of the charges for sewerage service and/or stormwater service shall be attached to the delinquent charges.

51.097 TERMINATION OF WATER SERVICE DUE TO DELINQUENCY.

Where the property having a delinquent account for charges for sewerage service is served by the city's water utility, the utility may, after reasonable notice to the person being billed, as provided by the rules and regulations of the utility adopted by the Board of Public Works, shut off water service to the property. Water service shall not be restored until the delinquent account, together with any required deposit and the costs of turning off/turning on the water, shall have been paid.

51.098 TERMINATION OF SEWER SERVICE DUE TO DELINQUENCY.

In addition to all other remedies provided, the utility may, after reasonable notice to the person being billed, as provided by the rules and regulations of the utility adopted by the Board of Works, terminate sewerage service to the property. Sewerage service shall not be restored until the delinquent account, together with the costs of terminating and reconnecting service, shall have been paid.

51.099 DELINQUENT FEES AND PENALTIES AS LIENS; DUPLICATES; COLLECTION.

Delinquent charges for sewerage services and/or stormwater services, and applied penalties, recording fees and service charges may be made a lien upon the property when the delinquent party is the property owner and may be collected in accordance with the provisions of I.C. 36-9-23-31, 36-9-23-32 and 36-9-23-33.

51.100 COLLECTION THROUGH COURT ACTIONS.

In addition to the foregoing remedies, the city may recover the amount of the

charges for sewerage services, penalties of 10% of the delinquent fees and reasonable attorney's fees in a civil action, and may foreclose liens established by this chapter in accordance with I.C. 36-9-23-34.

ADMINISTRATION AND ENFORCEMENT

**51.110 RULES AND REGULATIONS; BOARD OF WORKS
AUTHORITY.**

The Board of Public Works of the city shall, in accordance with the statutes of the state, and subject to the provisions and requirements of this chapter, make and enforce appropriate rules and regulations for the safe, economical and efficient management and operation of the city's sewage works, for the construction and use of sewers, building sewers, appurtenances and connections to the sewerage system; for the regulation, collection and refunding of rates and charges for sewerage service; and for the implementation and enforcement of the provisions of this chapter.

51.111 ENFORCEMENT.

Those provisions of this chapter not specifically dealt with elsewhere shall be enforced by the Director of City Utilities and such deputies as Director, with the approval of the Board of Public Works, may be appointed for such purposes. Whenever said Director or any such deputy shall deem it appropriate to charge any person with a violation(s) of this chapter, he shall issue to such person a Notice of Violation and/or Summons, which shall be processed according to the provisions of IC 34-28-5 and sewer rules and regulations, or pursuant to an ordinance adopted in accordance with I.C. 36-1-6-9.

51.112 SEWERAGE WORKS IMPROVEMENT FUND.

The City Controller shall establish and maintain, for as long as user charges and surcharges are collected under the rate schedule instituted herein, accounts for the Sewerage Works Improvement Fund as required by prior ordinances relating to the issuance of sewerage works revenue bonds now outstanding and further in accordance

with the laws of the State of Indiana relative to the deposit and disbursement of public funds.

51.999 PENALTY FOR VIOLATION.

Any person who violates or fails to comply with any provision of this chapter or of the rules and regulations of the Board of Public Works or administrative orders pertaining thereto, shall be subject to a fine of up to \$2,500 per day as set out at § 10.99 of the City of Fort Wayne Code of Ordinances or as otherwise provided by IC 34-28-5. Each day that such violation(s) or noncompliance continues shall constitute a separate offense.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Taylor, City Attorney

