

**ORDINANCES AND RESOLUTIONS
UP FOR INTRODUCTION
MARCH 9, 2010**

CITY UTILITIES COMMITTEE

*Thomas F. Didier - Chair
Glynn A. Hines - Co-Chair
All Council Members*

ACTION

S-10-03-04

**AN ORDINANCE approving Project Partnership Agreement for the Thieme Dr. Emergency Streambank Protection Program between US ARMY CORPS of ENGINEERS and the City of Fort Wayne, Indiana, in connection with the Board of Public Works
Total cost of \$748,000**

FINANCE COMMITTEE

*Tim Pape - Chair
Thomas E. Smith - Co-Chair
All Council Members*

S-10-03-02

AN ORDINANCE of the Common Council amending the Collective bargaining agreement for police officers represented by the Fraternal Order of Police, Indiana Wayne Lodge #14, Inc. for the years 2010, 2011, and 2012

FINANCE COMMITTEE

CONTINUED

ACTION

S-10-03-03

**AN ORDINANCE approving Consultant Contract
Maplecrest Rd.: Lake Ave. to State Blvd.
Preliminary Engineering; Right-of-Way Engineering;
Construction Administration between A & Z Engineering, LLC
and the City of Fort Wayne, Indiana, in connection with the
Board of Public Works**

Total cost of \$541,255

S-10-03-05

**AN ORDINANCE approving the awarding of RFP #2765
Annual Contract for Street Tree Pruning by the City of Fort
Wayne, Indiana, by and through its Department of Purchasing
and Mudrack Tree Care for the Fort Wayne Parks and
Recreation Department**

Total cost of \$270,000

REGULATIONS COMMITTEE

*Karen E. Goldner - Chair
Mitch Harper - Co-Chair
All Council Members*

R-10-03-01

**A RESOLUTION initiating the amendment
of Fort Wayne's Comprehensive Plan, Plan-it-Allen,
to adopt the Bike Fort Wayne Plan**

REGULATIONS COMMITTEE

CONTINUED

ACTION

S-10-03-06

AN ORDINANCE designating the Board of Public Works as Leasing Agent for the City of Fort Wayne, Indiana; approving the financing of various vehicles and equipment items by the City of Fort Wayne; authorizing acceptance of a lessor; and approving other actions with respect thereto

G-10-03-07

AN ORDINANCE amending Chapter 93: of Fort Wayne Code of Ordinances - Discrimination and Human Relations of the City of Fort Wayne

PUBLIC WORKS COMMITTEE

*Elizabeth M. Brown - Chair
John Shoaff - Co-Chair
All Council Members*

ACTION

S-10-03-08

**AN ORDINANCE approving the awarding of Increase of ITB #3019-Annual requirements for the purchase of bulk road salt by the City of Fort Wayne, Indiana, by and through its Department of Purchasing and North American Salt Company for the Street Department
Total cost of \$250,000**

BILL NO. S-10-03-04

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving PROJECT PARTNERSHIP AGREEMENT FOR THE THIEME DR. EMERGENCY STREAMBANK PROTECTION PROGRAM between US ARMY CORPS OF ENGINEERS and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

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

SECTION 1. That the PROJECT PARTNERSHIP AGREEMENT FOR THE THIEME DR. EMERGENCY STREAMBANK PROTECTION PROGRAM by and between US ARMY CORPS OF ENGINEERS and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

the US Army Corps of Engineers will bid and contract construction of streambank protection for approx. 400 feet along the St. Mary's River by Thieme Drive with 6'x3'x3' gabion baskets filled with large stone over geotextile fabric and suitable fill placed behind the baskets:

involving a total cost of not-to-exceed: SEVEN HUNDRED FORTY-EIGHT THOUSAND AND NO/100 DOLLARS - (\$748,000.00). A copy said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

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

BILL NO. S-10-03-02

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE of the Common Council amending the collective bargaining agreement for police officers represented by The Fraternal Order Police, Indiana Wayne Lodge #14, Inc. for the years 2010, 2011, and 2012.

WHEREAS, Common Council previously passed Ordinance S-130-09 approving the Contract for police officers represented by The Fraternal Order Police, Indiana Wayne Lodge #14, Inc. for the years 2010, 2011, and 2012.; and

WHEREAS, Article 28 – LIFE INSURANCE of the Contract is amended as follows:

ARTICLE 28 – LIFE INSURANCE

The City shall provide life insurance for all active members of the bargaining unit with a face value equal to the member of the bargaining unit's annual salary. The life insurance shall include a quadruple indemnity provision: *i.e.*, payment of four years' salary, for accidental death, whether on or off duty. For purposes of this Article, annual salary shall mean the member of the bargaining unit's base wage plus longevity for the year of death.

This benefit is not available to retired officers; and

WHEREAS, Article 32 – LONGEVITY PREMIUM of the Contract is amended adding a new paragraph - number 3:

ARTICLE 32 – LONGEVITY PREMIUM

Members of the bargaining unit shall be paid an annual longevity premium, according to the schedule listed below:

1. Members' longevity premium shall not exceed \$6500/year.
2. For current members receiving longevity premiums above the \$6500/year cap, the longevity premium shall freeze at the member of the bargaining unit's current level, and shall not exceed \$8000.
3. Members will bring longevity accrued prior to appointment.
4. Members will accrue longevity premiums at the rate of \$350/year from year one (1) through year fifteen (15), and \$200/year thereafter up to the established caps.

Such premium shall be paid in the paycheck issued that covers the pay period within which the officer's date of initial rank (longevity date) falls. The premium will be based upon the years in rank the officer achieves as of that longevity date.

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

SECTION 1. The amended collective bargaining agreement for police officers represented by The Fraternal Order Police, Indiana Wayne Lodge #14, Inc. for the years 2010, 2011, and 2012, specifically Article 28 – Life Insurance and Article 32 – Longevity Premium, a copy of which is on file in the office of the City Clerk and available for public inspections, is hereby approved .

SECTION 2. 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 Taylor, City Attorney

BILL NO. S-10-03-03

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving CONSULTANT CONTRACT - MAPLECREST RD.: LAKE AVE. TO STATE BLVD. - PRELIMINARY ENGINEERING; RIGHT-OF-WAYE ENGINEERING; CONSTRUCTION ADMINISTRATION between A&Z ENGINEERING, LLC and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

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

SECTION 1. That the CONSULTANT CONTRACT - MAPLECREST RD.: LAKE AVE. TO STATE BLVD. - PRELIMINARY ENGINEERING; RIGHT-OF-WAYE ENGINEERING; CONSTRUCTION ADMINISTRATION by and between A&Z ENGINEERING, LLC and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

All labor, insurance, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for consultant shall provide engineering services to prepare roadway plans for added travel lanes on Maplecrest Rd. from Lake Ave. to State Blvd.:

involving a total cost of not-to-exceed: FIVE HUNDRED FORTY-ONE THOUSAND, TWO HUNDRED FIFTY-FIVE AND NO/100 DOLLARS - (\$541,255.00). A copy said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 2. 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

BILL NO. S-10-03-05

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving the awarding of RFP #2765 - ANNUAL CONTRACT FOR STREET TREE PRUNING by the City of Fort Wayne, Indiana, by and through its Department of Purchasing and MUDRACK TREE CARE for the FORT WAYNE PARKS AND RECREATION DEPARTMENT.

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

SECTION 1. That RFP #2765 - ANNUAL CONTRACT FOR STREET TREE PRUNING between the City of Fort Wayne, by and through its Department of Purchasing and MUDRACK TREE CARE for the FORT WAYNE PARKS AND RECREATION DEPARTMENT, respectfully for:

2010 pruning of 5000 street trees in the Southeast and Northwest part of the City – (3rd year of the 3 year contract);

involving a total cost of TWO HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS - (\$270,000.00) all as more particularly set forth in said RFP #2765 - ANNUAL CONTRACT FOR STREET TREE PRUNING which is on file in the Office of the Department of Purchasing, and is by reference incorporated herein, made a part hereof, and is hereby in all things ratified, confirmed and approved.

SECTION 2. 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 Taylor, City Attorney

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol T. Taylor, City Attorney

BILL NO. R-10-03-01

RESOLUTION NO. _____

A RESOLUTION INITIATING THE AMENDMENT OF FORT WAYNE'S COMPREHENSIVE PLAN, PLAN-IT-ALLEN, TO ADOPT THE BIKE FORT WAYNE PLAN.

WHEREAS, the City of Fort Wayne, through its Common Council, desires the development of Transportation plans to implement the goals, policies, and recommendations of its Comprehensive Plan, Plan-It-Allen, in order to: Encourage and plan for fully accessible and safe alternative transportation options and infrastructure; determine the need for safe bicycle improvements; encourage the development of rights-of-way that can accommodate all users; educate the public about benefits of active transportation; and encourage safe road sharing among drivers, cyclists and pedestrians; and

WHEREAS, I.C. 36-7-4-511 allows the legislative body to initiate an amendment of the Comprehensive Plan by adopting a resolution to amend it, and direct the Plan Commission to prepare the amendment and submit it in the same manner as any other amendment to the comprehensive plan.

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

SECTION 1. To initiate the amending of the City of Fort Wayne's Comprehensive Plan, Plan-It-Allen, to include the Bike Fort Wayne Plan and for the Plan Commission to prepare and submit the amendment within 60 days after the formal written request by the legislative body.

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Taylor, City Attorney

BILL NO. S-10-03-06

SPECIAL ORDINANCE NO. A-_____

AN ORDINANCE designating the Board of Public Works as leasing agent for the City of Fort Wayne, Indiana; approving the financing of various vehicles and equipment items by the City of Fort Wayne; authorizing acceptance of a lessor; and approving other actions with respect thereto.

WHEREAS, the City of Fort Wayne, Board of Public Works needs to acquire various vehicles and equipment items for use by several departments of the City of Fort Wayne for continued effective operations; and

WHEREAS, the Board of Public Works has, in the past, generally coordinated the lease financing of various vehicles and equipment items and has let bids therefore; and

WHEREAS, various bids have been let for the acquisition of various vehicles and equipment items and Common Council approval of the acquisition of said various vehicles and equipment items is pending; and

WHEREAS, this Common Council now deems it in the public interest to finance said various vehicles and equipment items rather than outright purchase said items; and

WHEREAS, sufficient net revenues are available from the City to make lease financing debt payments on a timely basis as required for the financing of various vehicles and equipment items; and

WHEREAS, notices have been published requesting proposals from lessors to acquire the various vehicles and equipment items and to lease same to the City, pursuant to the terms and conditions contained in Exhibit "A"; and

WHEREAS, the proposed financing provides for fair and reasonable rental and other equitable terms and conditions and, further, that the execution of said financing will permit the use and acquisition of said various vehicles and equipment items within the present financial capabilities of the City and therefore same is in the public interest.

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

SECTION 1. This Common Council finds that the Board of Public Works should be and hereby is designated as the lease financing agent for the City of Fort Wayne, Indiana, for the transaction herein contemplated.

SECTION 2. The Common Council of the City of Fort Wayne hereby authorizes the City to lease, as lessee, those various vehicles and equipment items listed on the attached Exhibit "A", made a part hereof. It is understood that the exact lessor purchase costs for such various vehicles and equipment items listed on the Exhibit "A" shall be determined in accordance with bidding procedures of this City and accordingly subject to approval by this Common Council; however, the gross cost for such purchases excluding financing costs shall not exceed Four Million Two Hundred Thousand and no/100 Dollars (\$4,200,000).

SECTION 3. The Common Council of the City of Fort Wayne hereby authorizes the Board of Public Works to enter into the lease financing upon the determination by the Corporation Counsel.

SECTION 4. The Board of Public Works of the City of Fort Wayne is hereby empowered and authorized to award lessor rights to the most responsive and responsible bidder.

SECTION 5. The Mayor, the City Controller and the Board of Public Works are empowered and authorized to execute, on behalf of the City, leases and other documents as contemplated herein with lessor so selected.

SECTION 6. This ordinance shall be in full force and in effect from and after its passage and approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Taylor, City Attorney

ORDINANCE AMENDING CHAPTER 93:
DISCRIMINATION AND HUMAN RELATIONS
OF THE CITY OF FORT WAYNE CODE OF ORDINANCES

WHEREAS, it has been deemed necessary to amend certain parts of Chapter 93 "Discrimination and Human Relations"; and,

WHEREAS, it is the policy of the City of Fort Wayne to provide all citizens equal opportunity for employment, education, fair housing and access to public accommodation; and,

WHEREAS, an individual's Genetic Information and Gender Identity should not be a barrier to the individual's rights to equal opportunity any more than an individual's sex, race, color, religion, disability, ancestry, national origin, or place of birth, age, and sexual orientation; and,

WHEREAS, it is also necessary to amend parts of Chapter 93 "Discrimination and Human Relations" that reference any rights pertaining to disability rights of individuals to make them substantially equivalent with the "Americans with Disabilities Amendments Act of 2008"; and,

WHEREAS, a new subchapter of Chapter 93 will be added as stated below in Section 5, titled 93.061B "PROHIBITING EMPLOYMENT DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION;" and

WHEREAS, the following subchapter of Chapter 93 will be amended, as stated below in Section 4, to expand on the term "Disability": 93.016A; and

WHEREAS, the following subchapter of Chapter 93 will be deleted in its entirety, as stated below in Section 9: 93.021 and

WHEREAS, the following subchapters of Chapter 93 will be amended, as stated below in Sections 1, 2, 3, 6, 7, 8, 9, 10, and 11, to include "gender identity" and "genetic information": 93.001, 93.002, 93.016 (A) (C), (D) and (F); 93.017 (A) and (B); 93.018; 93.019; 93.035 and 93.055 (B); and,

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

SECTION 1. Section 93.001 shall be deleted in its entirety and replaced with the following:

§ 93.001 PURPOSE; FINDINGS OF FACT.

Discrimination in social, cultural and economic life in Fort Wayne against any person or persons because of race, sex, color, religion, disability, ancestry, national origin, place of birth, age, sexual orientation, genetic information, and gender identity is contrary to American principles and is harmful to the social, cultural, and economic life of the city. Discrimination, particularly in employment opportunities, public accommodations, education, and housing, increases the burden and cost of government; and, such discrimination contributes to increased crime, vice, juvenile delinquency, fires and other evils, thereby affecting the public safety, public health, and general welfare of the community. It is therefore deemed to be in the best interests of the city to create a metropolitan Commission to administer and enforce any anti-discrimination legislation and ordinances, all as authorized by the Indiana Civil Rights Act.

SECTION 2. Section 93.002 shall be deleted in its entirety and replaced with the following:

§ 93.002 DEFINITIONS.

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

AGE. Age or age discrimination shall have the same meaning as defined in IC 22-9-2-1.

DISABILITY. Physical or mental impairment as defined in Section 93.016A.

DISCRIMINATION. Any difference in treatment based on race, sex, color, religion, disability, ancestry, national origin, place of birth, genetic information, gender identity, or sexual orientation. DISCRIMINATION also shall mean the exclusion of a person from or failure or refusal to extend to a person equal opportunities because of race, sex, religion, color, disability, ancestry, national origin, place of birth, sexual orientation, gender identity, and genetic information.

GENDER IDENTITY. A person's actual or perceived gender, including a person's self-image, appearance, expression, or behavior, whether or not that self-image, appearance, or behavior is different from that traditionally associated with the person's biological sex as assigned at birth as being either female or male.

GENETIC INFORMATION. Information as defined in Section 93.016B.

LABOR ORGANIZATION. Any organization which exists for the purpose, in whole or in part, of collective bargaining or dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment.

NEIGHBORHOOD. A group of residences which are in relative proximity of each other within the metropolitan area of Fort Wayne, Indiana.

OWNER. The lessor, sublessor, assignor or managing agent or other person having the right of ownership or possession or the right to sell, rent, or lease any housing accommodation.

PERSON. An association, partnership or corporation, as well as a natural person. **PERSON**, as applied to partnerships or other associations, includes their members, and as applied to corporation, includes their officers and director. The term person also includes any individual acting in a fiduciary or representative capacity, whether appointed by the court or otherwise. The term shall include the City of Fort Wayne and all other units of local government within the territorial jurisdiction of said city, including Fort Wayne Community Schools, and all county departments within said territorial jurisdiction.

REAL ESTATE BROKER. Any person as defined herein, who, or a fee or other valuable consideration, sells, purchases, exchanges, or rents or negotiates the sale, purchase exchange or rental of the real property of another, or holds himself or herself out as engaged in the business of selling, purchasing, exchanging or renting the real estate of another, or collects rental for the use of real property of another.

REASONABLE ACCOMMODATION. May include:

(1) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(2) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

RETALIATION. The actions of any person in discrimination against any other person with regard to or denying any other person access to or opportunities in employment because any such other person has opposed any practice made unlawful by this chapter, or because such other person has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this chapter. ('74 Code, § 15-3) (Ord. G-21-78, passed 7-25-78; Am. Ord. G-22-00, passed 8-8-00)

SEXUAL ORIENTATION. Male or female homosexuality, heterosexuality and bisexuality, real or perceived, by orientation or practice.

SECTION 3. Section 93.016 shall be deleted in its entirety and replaced with the following:

§ 93.016 DISCRIMINATION IN EMPLOYMENT.

It shall be unlawful for any:

(A) Employer to discriminate against any person by treating any such person differently or by excluding from or failing or refusing to extend to any person equal opportunities with respect to hiring, termination, compensation, or other terms, conditions or privileges of employment, because of race, sex, color, religion, disability, ancestry, national origin, place of birth, age, genetic information, gender identity, or sexual orientation.

(B) Employer to fail to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped employee or prospective employee or to fail to make reasonable accommodations to the religious observance or practice of any employee or prospective employee unless such employer can demonstrate that the accommodation would impose an undue hardship on the conduct of the employers' business.

(C) Employer to make, print or publish, or cause to be made, printed or published any notice, statement, or advertisement with respect to employment that indicates a preference, limitation, specification or discrimination based on race, sex, color, religion, disability, ancestry, national origin, place of birth, age, genetic information, gender identity, or sexual orientation.

(D) Person to discriminate against any person by treating any such person differently or by excluding from or failing or refusing to extend to any person equal opportunities with respect to hiring, termination, compensation, or other terms, conditions or privileges of employment, because of race, sex, color, religion, disability, ancestry, national origin, place of birth, age, genetic information, gender identity, or sexual orientation.

(E) Person to fail to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified disabled employee or prospective employee or to fail to make reasonable accommodations to the religious observance or practice of any employee or prospective employee unless such employer can demonstrate that the accommodation would impose an undue hardship on the conduct of the employers' business.

(F) Person to make, print or publish, or cause to be made, printed or published any notice, statement, or advertisement with respect to employment that indicates a preference, limitation, specification or discrimination based on race, sex, color, religion, disability, ancestry, national origin, place of birth, age, genetic information, gender identity, or sexual orientation.

(G) To engage in any form of retaliation against an employee for the exercise of the employee's rights pursuant to this chapter or Title VII of the Civil Rights Act of 1964.

('74 Code, § 15-12) (Ord. G-21-78, passed 7-25-78; Am. Ord. G-22-00, passed 8-8-00; Am. Ord. G-20-03, passed 5-27-03) [Penalty, see § 93.999](#)

SECTION 4. Section 93.016A shall be deleted in its entirety and replaced with the following:

§ 93.016A EMPLOYMENT DISCRIMINATION AGAINST PERSONS WITH DISABILITIES PROHIBITED.

(A) *Definitions.* For the purposes of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

(1) **AUXILIARY AIDS AND SERVICES.** The term "auxiliary aids and services" includes,

(a) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(b) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(c) acquisition or modification of equipment or

devices; and

(d) other similar services and actions.

(2) **COMMISSION.** The Fort Wayne Metropolitan Human Relations Commission.

(3) **COVERED ENTITY.** An employer, employment agency, labor organization, or joint labor-management committee.

(4) **DISABILITY.** The term "disability" means, with respect to an individual,

(a) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(b) a record of such an impairment; or

(c) being regarded as having such an impairment.

(i) Major Life Activities. For purposes of paragraph (a) above, major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(ii) Major Bodily Functions. For purposes of paragraph (4)(a) above, a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory,

circulatory, endocrine, and reproductive functions.

(iii) Regarded as Having Such an Impairment. For purposes of paragraph (4)(C) above,

a. An individual meets the requirement of 'being regarded as having such an impairment' if the individual establishes that he or she has been subjected to an action prohibited under this Act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

b. Paragraph (4)(c) above shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

(iv) Rules of Construction Regarding the Definition of Disability. In this section, the definition of "disability" in paragraph (4)(a)(b) and (c) above shall be construed in accordance with the following:

a. The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Ordinance, to the maximum extent permitted by the terms of this Ordinance.

b. The term 'substantially limits' shall be interpreted consistently with the findings and purposes of the ADA Amendments

Act of 2008.

c. An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

d. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

e. The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as

i. medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

ii. use of assistive technology;

iii. reasonable accommodations or auxiliary aids or services; or

iv. learned behavioral or adaptive

neurological modifications.

f. As used in subparagraph (e) above, the ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

g. As used in subparagraph (e) above,

i. the term 'ordinary eyeglasses or contact lenses' means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

ii. the term 'low-vision devices' means devices that magnify, enhance, or otherwise augment a visual image."

(6) ***DIRECT THREAT.*** A significant risk to the health or safety of self or others that cannot be eliminated by reasonable accommodation

(7) ***EMPLOYEE.*** A person hired by a covered entity, a former employee, or an applicant for employment.

(8) ***ILLEGAL USE OF DRUGS.***

(a) *In General:* The use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of federal law.

(b) *Drugs.* A controlled substance, as defined in schedules I through V of Section 202 of the Controlled Substances Act.

(9) ***QUALIFIED INDIVIDUAL WITH A DISABILITY.*** An individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this title, consideration shall be given to the employers judgment as to what functions of a job are essential, and if an employer has

prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(10) ***REASONABLE ACCOMMODATION.*** May include:

(a) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(b) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(11) ***UNDUE HARDSHIP.***

(a) An action requiring significant difficulty or expense, when considered in light of the factors set forth in subdivision (b).

(b) Factors to be considered. In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include:

(i) The nature and cost of the accommodation needed under this Act;

(ii) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) The type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

(B) ***Discrimination on the Basis of Disability Prohibited.***

(1) ***General Rule.*** No covered entity shall discriminate against a qualified individual with a disability on the basis of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(2) ***Construction.*** As used in subdivision (1), the term discriminate includes:

(a) Limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee on the basis of the disability of such applicant or employee;

(b) Participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this title (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(c) Utilizing standards, criteria, or methods of administration:

(i) That have the effect of discrimination on the basis of disability; or

(ii) That perpetuates the discrimination of others who are subject to common administrative control;

(d) Excluding or otherwise denying equal jobs or benefits to a qualified individual on the basis of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(e) Not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity;

(f) Denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(g) Using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity;

(h) Failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure); and,

(i) Retaliating against an employee for reporting a complaint to a governmental agency or otherwise engaging in a lawful exercise of the employees' rights, regardless of whether or not the employee's complaint is determined by an agency of the government or court of law to be without sufficient merit or evidence.

(3) *Medical examinations and inquiries.*

(a) *In general.* The prohibition against discrimination as referred to in subdivision (a) shall include medical examinations and inquiries.

(b) *Pre-employment.*

(i) Prohibited examination or inquiry. Except as provided in subdivision (ii), a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

(ii) Acceptable inquiry. A covered entity may make pre-employment inquiries into the ability of an applicant to perform job-related functions.

(c) *Employment entrance examination.* A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if:

(i) All entering employees are subjected to such an examination regardless of disability;

(ii) Information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations; first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and government officials investigating compliance with this Act shall be provided relevant information on request; and the results of such examination are used only in accordance with this title.

(d) *Examination and inquiry.*

(i) Prohibited examinations and inquiries. A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(ii) Acceptable examinations and inquiries. A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(iii) Requirement. Information obtained under subdivision (ii) regarding the medical condition or history of any employee are subject to the requirements of subdivisions (c)(i) and (ii).

(C) *Defenses.*

(1) *In general.* It may be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under this title.

(2) *Qualification standards.* The term "qualification standards" may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

(3) *Religious entities.*

(a) In general. This title shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(b) Religious tenets requirement. Under this title, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.

(4) *Persons with infectious and communicable diseases.*

(a) In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is included on the list developed by the United States Secretary of Health and Human Services pursuant to Section 103(d) of the Americans with Disabilities Act, and which cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling.

(b) *Construction.* Nothing in this section shall be construed to preempt, modify, or amend any state, county, or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which cannot be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissibility published by the Secretary of Health and Human Services published pursuant to Section 103(d) of the Americans with Disabilities Act.

(D) *Illegal Use Of Drugs And Alcohol.*

(1) *Qualified individual with a disability.* For purposes of this title, the term qualified individual with a disability shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(2) *Rules of construction.* Nothing in subdivision (a) shall be construed to exclude as a qualified individual with a disability an individual who:

(a) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(b) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(c) Is erroneously regarded as engaging in such use, but is not engaging in such use; except that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in subdivision (a) or (b) is no longer engaging in the illegal use of drugs.

(3) *Authority of covered entity.* A covered entity:

(a) May prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(b) May require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(c) May require that employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.);

(d) May hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee.

(4) *Drug Testing.*

(a) *In general.* For purposes of this title, a test to determine the illegal use of drugs shall not be considered a medical examination.

(b) *Construction.* Nothing in this title shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

SECTION 5. A new Section 93.016B is hereby added:

§ 93.016B PROHIBITING EMPLOYMENT DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION

(A) DEFINITIONS.

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

(1) **COMMISSION.** The Fort Wayne Metropolitan Human Relations Commission

(2) **COVERED ENTITY.** An employer, employment agency, labor organization, or joint labor-management committee.

(3) **FAMILY MEMBER.** The term “family member” means, with respect to an individual

(a) a dependent (as such term is used for purposes of section 701(f)(2) of the Employee Retirement Income Security Act of 1974) of such individual, and

(b) any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of such individual or of an individual described in subparagraph (a).

(4) **GENETIC INFORMATION.**

(a) *In general*, the term “genetic information” means, with respect to any individual, information about

(i) such individual's genetic tests,

(ii) the genetic tests of family members of such individual, and

(iii) the manifestation of a disease or disorder in family members of such individual.

(b) *Inclusion of genetic services and participation in genetic research.* Such term includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by such individual or any family member of such individual.

(c) *Exclusions.* The term ‘genetic information’ shall not include information about the sex or age of any individual.

(5) **GENETIC MONITORING.** The term “genetic monitoring” means the periodic examination of employees to evaluate acquired modifications to their genetic material, such as chromosomal damage or evidence of increased occurrence of mutations, that may have developed in the course of employment due to exposure to toxic substances in the workplace, in order to identify, evaluate, and respond to the effects of or control adverse environmental exposures in the workplace.

(6) **GENETIC SERVICES.** The term “genetic services” means:

(a) a genetic test;

(b) genetic counseling (including obtaining, interpreting, or assessing genetic information); or

(c) genetic education.

(7) **GENETIC TEST.**

(a) *In general:* The term “genetic test” means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes.

(b) *Exceptions.* The term “genetic test” does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes.

(B) EMPLOYER PRACTICES.

(1) *Discrimination based on genetic information.* It shall be an unlawful employment practice for an employer:

(a) to fail or refuse to hire, or to discharge, any employee, or otherwise to discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment of the employee, because of genetic information with respect to the employee; or

(b) to limit, segregate, or classify the employees of the employer in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect the status of the employee as an employee, because of genetic information with respect to the employee.

(2) *Acquisition of Genetic Information.* It shall be an unlawful employment practice for an employer to request, require, or purchase genetic information with respect to an employee or a family member of the employee except:

(a) where an employer inadvertently requests or requires family medical history of the employee or family member of the employee;

(b) where

(i) health or genetic services are offered by the employer, including such services offered as part of a wellness program;

(ii) the employee provides prior, knowing, voluntary, and written authorization;

(iii) only the employee (or family member if the family member is receiving genetic services) and the licensed health care

professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

(iv) any individually identifiable genetic information provided under subparagraph (iii) in connection with the services provided under subparagraph (i) is only available for purposes of such services and shall not be disclosed to the employer except in aggregate terms that do not disclose the identity of specific employees;

(c) where an employer requests or requires family medical history from the employee to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

(d) where an employer purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history;

(e) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if:

(i) the employer provides written notice of the genetic monitoring to the employee;

(ii) the employee provides prior, knowing, voluntary, and written authorization; or the genetic monitoring is required by Federal or State law;

(iii) the employee is informed of individual monitoring results;

(iv) the monitoring is in compliance with:

a. any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

b. State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(v) the employer, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific employees; or

(f) where the employer conducts DNA analysis for law enforcement purposes as a forensic laboratory or for purposes of human remains identification, and requests or requires genetic information of such employer's employees, but only to the extent that such genetic information is used for analysis of DNA identification markers for quality control to detect sample contamination.

(3) *Preservation of protections.* In the case of information to which any of paragraphs (a) through (f) of subsection (B) applies, such information may not be used in violation of paragraph (a) or (b) of subsection (1) or treated or disclosed in a manner that violates section (F).

(C) EMPLOYMENT AGENCY PRACTICES.

(1) *Discrimination based on genetic information.* It shall be an unlawful employment practice for an employment agency:

(a) to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of genetic information with respect to the individual;

(b) to limit, segregate, or classify individuals or fail or refuse to refer for employment any individual in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual; or

(c) to cause or attempt to cause an employer to discriminate against an individual in violation of this title.

(2) *Acquisition of genetic information.* It shall be an unlawful employment practice for an employment agency to request, require, or purchase genetic information with respect to an individual or a family member of the individual except:

(a) where an employment agency inadvertently requests or requires family medical history of the individual or family member of the individual;

(b) where:

(i) health or genetic services are offered by the employment agency, including such services offered as part of a wellness program;

(ii) the individual provides prior, knowing, voluntary, and written authorization;

(iii) only the individual (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

(iv) any individually identifiable genetic information provided under subparagraph (iii) in connection with the services provided under subparagraph (i) is only available for purposes of such services and shall not be disclosed to the employment agency except in aggregate terms that do not disclose the identity of specific individuals;

(c) where an employment agency requests or requires family medical history from the individual to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

(d) where an employment agency purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

(e) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if:

(i) the employment agency provides written notice of the genetic monitoring to the individual;

(ii) the individual provides prior, knowing, voluntary, and written authorization; or the genetic monitoring is required by Federal or State law;

(iii) the individual is informed of individual monitoring results;

(iv) the monitoring is in compliance with:

a. any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

b. State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(v) the employment agency, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific individuals.

(3) *Preservation of protections.* In the case of information to which any of paragraphs (a) through (f) of subsection (C) applies, such information may not be used in violation of paragraph (a), (b), or (c) of subsection (1) or treated or disclosed in a manner that violates section (F).

(D) LABOR ORGANIZATION PRACTICES.

(1) *Discrimination based on genetic information.* It shall be an unlawful employment practice for a labor organization:

(a) to exclude or to expel from the membership of the organization, or otherwise to discriminate against, any member because of genetic information with respect to the member;

(b) to limit, segregate, or classify the members of the organization, or fail or refuse to refer for employment any member, in any way that would deprive or tend to deprive any member of employment opportunities, or otherwise adversely affect the status of the member as an employee, because of genetic information with respect to the member; or

(c) to cause or attempt to cause an employer to discriminate against a member in violation of this title.

(2) *Acquisition of genetic information.* It shall be an unlawful employment practice for a labor organization to request, require, or purchase genetic information with respect to a member or a family member of the member except--

(a) where a labor organization inadvertently requests or requires family medical history of the member or family member of the member;

(b) where:

(i) health or genetic services are offered by the labor organization, including such services offered as part of a wellness program;

(ii) the member provides prior, knowing, voluntary, and written authorization;

(iii) only the member (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

(iv) any individually identifiable genetic information provided under subparagraph (iii) in connection with the services provided under subparagraph (i) is only available for purposes of such services and shall not be disclosed to the labor organization except in aggregate terms that do not disclose the identity of specific members;

(c) where a labor organization requests or requires family medical history from the members to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

(d) where a labor organization purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

(e) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if:

(i) the labor organization provides written notice of the genetic monitoring to the member;

(ii) the member provides prior, knowing, voluntary, and written authorization; or the genetic monitoring is required by Federal or State law;

(iii) the member is informed of individual monitoring results;

(iv) the monitoring is in compliance with:

a. any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

b. State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(v) the labor organization, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific members.

(3) *Preservation of protections.* In the case of information to which any of paragraphs (a) through (e) of subsection (2) applies, such information may not be used in violation of paragraph (a), (b), or (c) of subsection (1) or treated or disclosed in a manner that violates section (F).

(E) TRAINING PROGRAMS.

(1) *Discrimination based on genetic information.* It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs:

(a) to discriminate against any individual because of genetic information with respect to the individual in admission to, or employment in, any program established to provide apprenticeship or other training or retraining;

(b) to limit, segregate, or classify the applicants for or participants in such apprenticeship or other training or retraining, or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual; or

(c) to cause or attempt to cause an employer to discriminate against an applicant for or a participant in such apprenticeship or other training or retraining in violation of this title.

(2) *Acquisition of genetic information.* It shall be an unlawful employment practice for an employer, labor organization, or joint labor-management committee described in subsection (1) to request, require, or purchase genetic information with respect to an individual or a family member of the individual except:

(a) where the employer, labor organization, or joint labor-management committee inadvertently requests or requires family medical history of the individual or family member of the individual;

(b) where:

(i) health or genetic services are offered by the employer, labor organization, or joint labor-management committee, including such services offered as part of a wellness program;

(ii) the individual provides prior, knowing, voluntary, and written authorization;

(iii) only the individual (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

(iv) any individually identifiable genetic information provided under subparagraph (iii) in connection with the services provided under subparagraph (i) is only available for purposes of such services and shall not be disclosed to the employer, labor organization, or joint labor-management committee except in aggregate terms that do not disclose the identity of specific individuals;

(c) where the employer, labor organization, or joint labor-management committee requests or requires family medical history from the individual to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

(d) where the employer, labor organization, or joint labor-management committee purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history;

(e) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if:

(i) the employer, labor organization, or joint labor-management committee provides written notice of the genetic monitoring to the individual;

(ii) the individual provides prior, knowing, voluntary, and written authorization; or the genetic monitoring is required by Federal or State law;

(iii) the individual is informed of individual monitoring results;

(iv) the monitoring is in compliance with:

a. any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

b. State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the

authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(v) the employer, labor organization, or joint labor-management committee, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific individuals; or

(f) where the employer conducts DNA analysis for law enforcement purposes as a forensic laboratory or for purposes of human remains identification, and requests or requires genetic information of such employer's apprentices or trainees, but only to the extent that such genetic information is used for analysis of DNA identification markers for quality control to detect sample contamination.

(3) *Preservation of protections.* In the case of information to which any of paragraphs (a) through (f) of subsection (2) applies, such information may not be used in violation of paragraph (a), (b), or (c) of subsection (1) or treated or disclosed in a manner that violates section (F).

(F) CONFIDENTIALITY OF GENETIC INFORMATION.

(1) *Treatment of information as part of confidential medical record.* If an employer, employment agency, labor organization, or joint labor-management committee possesses genetic information about an employee or member, such information shall be maintained on separate forms and in separate medical files and be treated as a confidential medical record of the employee or member. An employer, employment agency, labor organization, or joint labor-management committee shall be considered to be in compliance with the maintenance of information requirements of this subsection with respect to genetic information subject to this subsection that is maintained with and treated as a confidential medical record under section 102(d)(3)(B) of the Americans With Disabilities Act (42 U.S.C. 12112(d)(3)(B)).

(2) *Limitation on disclosure.* An employer, employment agency, labor organization, or joint labor-management committee shall not disclose genetic information concerning an employee or member except:

(a) to the employee or member of a labor organization (or family member if the family member is receiving the genetic services) at the written request of the employee or member of such organization;

(b) to an occupational or other health researcher if the research is conducted in compliance with the regulations and protections provided for under part 46 of title 45, Code of Federal Regulations;

(c) in response to an order of a court, except that:

(i) the employer, employment agency, labor organization, or joint labor-management committee may disclose only the genetic information expressly authorized by such order; and

(ii) if the court order was secured without the knowledge of the employee or member to whom the information refers, the employer, employment agency, labor organization, or joint labor-management committee shall inform the employee or member of the court order and any genetic information that was disclosed pursuant to such order;

(d) to government officials who are investigating compliance with this title if the information is relevant to the investigation;

(e) to the extent that such disclosure is made in connection with the employee's compliance with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws; or

(f) to a Federal, State, or local public health agency only with regard to information that is described in section 93.016B(A)(4)(a)(iii) and that concerns a contagious disease that presents an imminent hazard of death or life-threatening illness, and that the employee whose family member or family members is or are the subject of a disclosure under this paragraph is notified of such disclosure.

(3) *Relationship to HIPAA regulations.* With respect to the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d-2 note), this title does not prohibit a covered entity under such regulations from any use or disclosure of health information that is authorized for the covered entity under such regulations. The previous sentence does not affect the authority of such Secretary to modify such regulations.

(G) REMEDIES AND ENFORCEMENT.

(1) See § 93.054 Powers and Duties and § 93.999 Penalty

(2) *Prohibition against retaliation.* No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by section 93.016B or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section. The remedies and procedures otherwise provided for under this section shall be available to aggrieved individuals with respect to violations of this subsection.

(H) CONSTRUCTION.

(1) *In general:* Nothing in section 93.016B shall be construed to:

(a) limit the rights or protections of an individual under any other Federal or State statute that provides equal or greater protection to an individual than the rights or protections provided for under this title, including the protections of an individual under the Americans with Disabilities Amendments Act of 2008 (42 U.S.C. 12101 et seq.) (including coverage afforded to individuals under section 102 of such Act (42 U.S.C. 12112)), or under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.);

(b) limit the rights or protections of an individual to bring an action under this title against an employer, employment agency, labor organization, or joint labor-management committee for a violation of this section.

(2) *Genetic information of a fetus or embryo.* Any reference in this section to genetic information concerning an individual or family member of an individual shall:

(a) with respect to such an individual or family member of an individual who is a pregnant woman, include genetic information of any fetus carried by such pregnant woman; and

(b) with respect to an individual or family member utilizing an assisted reproductive technology, include genetic information of any embryo legally held by the individual or family member.

(I) MEDICAL INFORMATION THAT IS NOT GENETIC INFORMATION.

An employer, employment agency, labor organization, or joint labor-management committee shall not be considered to be in violation of section 93.016B based on the use, acquisition, or disclosure of medical information that is not genetic information about a manifested disease, disorder, or pathological condition of an employee or member, including a manifested disease, disorder, or pathological condition that has or may have a genetic basis.

SECTION 6. Section 93.017 shall be deleted in its entirety and replaced with the following:

§ 93.017 DISCRIMINATION BY LABOR ORGANIZATIONS.

It shall be unlawful for a labor organization to:

(A) Exclude or expel from its membership, or otherwise to discriminate against any individual because of race, sex, color, religion, disability, ancestry, national origin, place of birth, age, genetic information, gender identity, or sexual orientation.

(B) Limit, segregate, or classify its membership, or applicants for membership, or to classify or fail or refuse to refer for employment any individual in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his or her status as an employee or as an applicant for employment, because of race, sex, color, religion, disability, ancestry, national origin, place of birth, age, genetic information, gender identity, or sexual orientation.

(C) To cause or attempt to cause an employer to discriminate against an individual in violation of this section.

('74 Code, § 15-13) (Ord. G-21-78, passed 7-25-78; Am. Ord. G-20-03, passed 5-27-03)
[Penalty, see § 93.999](#)

SECTION 7. Section 93.018 shall be deleted in its entirety and replaced with the following:

§ 93.018 DISCRIMINATION IN PUBLIC ACCOMMODATIONS.

It shall be unlawful for any person or establishment which caters or offer its services or facilities or goods to the general public to discriminate against anyone because of race, sex, color, religion, disability, ancestry, national origin, place of birth, age, genetic information, gender identity, or sexual orientation.

('74 Code, § 15-14) (Ord. G-21-78, passed 7-25-78; Am. Ord. G-20-03, passed 5-27-03)
[Penalty, see § 93.999](#)

SECTION 8. Section 93.019 shall be deleted in its entirety and replaced with the following:
§ 93.019 DISCRIMINATION IN EDUCATION.

It shall be unlawful for any person, establishment or governmental agency regularly engaged in the offering of educational services to discriminate against anyone because of race, sex, color, religion, disability, ancestry, national origin, place of birth, age, genetic information, gender identity, or sexual orientation.

('74 Code, § 15-15) (Ord. G-21-78, passed 7-25-78; Am. Ord. G-20-03, passed 5-27-03)
[Penalty, see § 93.999](#)

SECTION 9. Section 93.021 shall be deleted in its entirety.

SECTION 10. Section 93.035 shall be deleted in its entirety and replaced with the following:

§ 93.035 DEFINITIONS.

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

DISABILITY. A condition that can mean or be described as:

(1) Any physical or mental impairment which substantially limits one or more of a person's major life activities; or

(2) A record of such an impairment;

- (3) A person who is regarded as having such an impairment.

DISCRIMINATES, DISCRIMINATING and ***DISCRIMINATORY*** mean and include:

- (1) To promote segregation or separation in any manner, to treat any person differently, or to exclude from or fail or refuse to extend to any person equal opportunities with respect to hiring, termination, compensation, or other terms, conditions or privileges of employment, because of race, sex, color, religion, disability, ancestry, national origin, place of birth, age, genetic information, gender identity, or sexual orientation.

- (2) To fail to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified employee as set forth in § [93.016A](#);

- (3) To fail to make reasonable accommodations to the religious observance or practice of any employee or prospective employee unless the employee can demonstrate that the accommodation would impose an undue hardship on the conduct of the employer's business;

- (4) To make, print or publish, or cause to be made, printed or published any notice, statement, or advertisement with respect to employment that indicates a preference, limitation, specification or discrimination based on race, sex, color, religion, disability, ancestry, national origin, place of birth, age, genetic information, gender identity, or sexual orientation.

The following practices are not included in the meaning of ***DISCRIMINATION***:

- (1) For any not-for-profit association, incorporated or otherwise, organized exclusively for fraternal or religious purposes, to devote its resources to its own religion or denomination, or to give employment preference to its own members;

- (2) For any not-for-profit association, incorporated or otherwise, established for the purpose of offering or providing education, training or other social services and benefits to handicapped persons, to devote its resources to such handicapped persons, or to give a preference to handicapped persons with respect to such education, training or social services and benefits.

OBSTRUCT. The action of any person knowingly obstructing the fair and lawful enforcement of this chapter by coercing or intimidating any complainant or prospective complainant, or any witness to any act of discrimination as defined herein; after such person has received actual notice of a discrimination charge, or has been served notice of a complaint filed.

RETALIATION. The actions of any person in discriminating against any other person with regard to or denying any other person access to or opportunities in employment, because any such other person has opposed any practice made unlawful by this chapter, or because such other person has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this chapter.

('74 Code, § 15-17(a)) (Ord. G-34-78, passed 12-12-78; Am. Ord. G-22-00, passed 8-8-00; Am. Ord. G-20-03, passed 5-27-03)

SECTION 11. Section 93.055 shall be deleted in its entirety to be replaced by the following:

§ 93.055 RESPONSIBILITIES.

(A) Study the relationship between persons of various races, sexes, creeds, abilities, and nationalities within the city and to advise and assist the various city departments in matters involving relationships between such groups to the end that prejudice, intolerance, bigotry, and discrimination will be eliminated in Fort Wayne;

(B) Eliminate discrimination in education, employment, public accommodation and housing based upon sex, race, religion, handicap, ancestry, national origin or place of birth, age, genetic information, gender identity, or sexual orientation;

(C) Study, investigate and take action in regard to any condition having an adverse effect upon relations between persons of various races, sexes, creeds, abilities and nationalities;

(D) Institute and conduct educational and other programs intended to promote the equal rights and opportunities of all persons;

(E) Solicit the cooperation of the various racial, ethnic, handicapped, women's rights, and religious groups within the community in order to improve the quality of communications and understanding within the community;

(F) Stimulate private and governmental department and agencies to develop and foster meaningful programs in support of the objectives and purposes of the Metropolitan Human Relations Commission;

(G) Ensure the equal protection of all persons and the full availability of all rights and privileges of citizenship to all persons.

('74 Code, § 15-2) (Ord. G-21-78, passed 7-25-78; Am. Ord. G-30-96, passed 12-17-96; Am. Ord. G-31-96, passed 12-17-96)

SECTION 12. These amendments to this Ordinance shall be in immediate full force and effect upon all necessary approval by the Mayor, or an override of a Mayoral veto, and any legal publication required by Indiana law thereof.

Karen Goldner, Council Member

APPROVED AS TO FORM AND LEGALITY:

Joseph G. Bonahoom, City Council Attorney

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving the awarding of INCREASE OF ITB #3019-ANNUAL REQUIREMENTS FOR THE PURCHASE OF BULK ROAD SALT by the City of Fort Wayne, Indiana, by and through its Department of Purchasing and NORTH AMERICAN SALT COMPANY for the STREET DEPARTMENT.

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

SECTION 1. That INCREASE OF ITB #3019-ANNUAL REQUIREMENTS FOR THE PURCHASE OF BULK ROAD SALT between the City of Fort Wayne, by and through its Department of Purchasing and NORTH AMERICAN SALT COMPANY for the STREET DEPARTMENT, respectfully for:

purchase of additional Road Salt for 2010 - increase amount is \$250,000.00:

involving a total cost of TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS - (\$250,000.00) - (TOTAL PURCHASE AMOUNT FOR 2010 IS \$610,000.00)

SECTION 2. Prior Approval has been requested from Common Council on FEBRUARY 23, 2010. Said copy is on file in the Office of the City Clerk and made available for public inspection, according to law.

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

