

**CODE OF ORDINANCES**

**City of**

**MUNCIE, INDIANA**

**Looseleaf Supplement**

This Supplement contains all ordinances deemed advisable to be included at this time through:

**Ordinance No. 9-15, enacted April 6, 2015.**

See the References to Ordinances for further information.

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Insert and maintain this instruction sheet in front of this publication. File removed pages for reference.



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(This checklist will be updated with the  
printing of each Supplement)

From our experience in publishing Looseleaf Supplements on a page-for-page substitution basis, it has become evident that through usage and supplementation many pages can be inserted and removed in error.

The following listing is included in this Code as a ready guide for the user to determine whether the Code volume properly reflects the latest printing of each page.

In the first column all page numbers are listed in sequence. The second column reflects the latest printing of the pages as they should appear in an up-to-date volume. The letters "OC" indicate the pages have not been reprinted in the Supplement Service and appear as published for the original Code. When a page has been reprinted or printed in the Supplement Service, this column reflects the identification number or Supplement Number printed on the bottom of the page.

In addition to assisting existing holders of the Code, this list may be used in compiling an up-to-date copy from the original Code and subsequent Supplements.

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## SUPPLEMENT HISTORY TABLE

The table below allows users of this Code to quickly and accurately determine what ordinances have been considered for codification in each supplement. Ordinances that are of a general and permanent nature are codified in the Code and are considered "Included." Ordinances that are not of a general and permanent nature are not codified in the Code and are considered "Omitted."

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**Sec. 34.41. Nomination and appointment.**

(A) Trustees and commissioners of the redevelopment commission shall be nominated and appointed as provided in IC 18-7-7 and shall serve for the terms as provided in that chapter.

(B) The clerk is directed to notify the mayor and common council of the city and the judge of the Delaware Circuit Court of the adoption of these sections and of their duty to nominate, select, and appoint trustees of the redevelopment commission as required by IC 18-7-7-5 and 18-7-7-6.

(Code 1968, § 34.21)

**Sec. 34.42. Meetings.**

The redevelopment trustees shall meet upon call of the mayor within 30 days of their appointment and shall appoint five commissioners by majority vote in accordance with IC 18-7-7-6 and 18-7-7-7.

(Code 1968, § 34.22)

**Secs. 34.43—34.69. Reserved.**

DIVISION 4. POLICE AND FIREMEN'S  
PENSION BOARDS\*

**Sec. 34.70. Police pension fund board of trustees.**

A police pension fund is established in accordance with the provisions of state law.

(Code 1968, § 34.40)

**Sec. 34.71. Firemen's pension fund board of trustees.**

A firemen's pension fund is established in accordance with the provisions of state law.

(Code 1968, § 34.41)

**Secs. 34.72—34.79. Reserved.**

\*State law references—Firemen's pension fund, IC 18-1-12, 19-1-37; police pension fund, IC 19-1-24-1.

DIVISION 5. HUMAN RIGHTS  
COMMISSION†

**Sec. 34.80. Public policy and purpose.**

(A) It is the public policy of the city to provide all of its citizens equal opportunity for education, employment access to public conveniences and accommodations, and acquisition through purchase or rental of real property including but not limited to housing, and to eliminate discrimination based on race, color, age, religion, sex, sexual orientation, gender identity, disability, ancestry, national origin, or United States military service veteran status since such discrimination is an impediment to equal opportunity. Equal education, employment opportunities, access to and use of public accommodations, and equal opportunity for acquisition of real property are hereby declared to be civil rights.

(B) The practice of denying these rights to properly qualified persons by reason of the race, color, age, religion, sex, sexual orientation, gender identity, disability, ancestry, national origin, or United States military service veteran status of such person is contrary to the principles of freedom and equality of opportunity and is a burden to the objective of the public policy of this city and shall be considered as discriminatory practices. The promotion of equal opportunity without regard to race, color, age, religion, sex, sexual orientation, gender identity, disability, ancestry, national origin, or United States military service veteran status is the purpose of this section.

(C) It is also the public policy of the city to protect employers, labor organizations, employment agencies, property owners, real estate brokers, builders, and lending institutions from unfounded charges of discrimination.

(D) In filling such broad purposes, the Muncie Human Rights Commission is to:

- (1) Study, investigate and take action in regard to any condition having an adverse effect upon relations between persons of

†Editor's note—Ord. No. 9-15, § 1(Exh. A), adopted April 6, 2015, amended former Div. 5, §§ 34.80—34.87, in its entirety to read as herein set out. Former Div. 5 pertained to similar subject matter and derived from Ord. No. 41-89, adopted Oct. 2, 1989.

various race, color, age, religion, sex, sexual orientation, gender identity, disability, ancestry, national origin, or United States military service veteran status groups;

- (2) Institute and conduct educational and other programs intended to promote the equal rights and opportunities of all persons;
- (3) Solicit the cooperation the race, color, age, religion, sex, sexual orientation, gender identity, disability, ancestry, national origin, or United States military service veteran status groups within the community in order to improve the quality of communications and understanding within the community;
- (4) Stimulate private and governmental departments and agencies to develop and foster meaningful programs in support of the objectives and purposes of the Muncie Human Rights Commission; and
- (5) Ensure the equal protection of all persons and the full availability of all rights and privileges of citizenship to all persons.

(Ord. No. 9-15, § 1(Exh. A), 4-6-15)

**Sec. 34.81 Definitions and exemptions.**

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

*Disability.* A person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment.

*Discrimination.* Any difference in treatment based on race, color, age, religion, sex, sexual orientation, gender identity, disability, ancestry, national origin, or United States military service veteran status. The term "discrimination" shall also mean the exclusion of a person from or failure or refusal to extend to a person equal opportunities because of race, color, age, religion, sex, sexual orientation, gender identity, disability, ancestry, national origin, or United States mili-

tary service veteran status. The term "discrimination" shall also mean the promotion of segregation or separation, in any manner on the basis of race, color, age, religion, sex, sexual orientation, gender identity, disability, ancestry, national origin, or United States military service veteran status.

*Employer.* Any person employing six or more individuals within the territorial limits of the city. Employer does not include any not-for-profit corporation or association organized exclusively for fraternal or religious purposes, or any school, educational, or charitable religious institution, or any exclusively social club, corporation, or association that is not organized for profit.

*Executive committee.* The Chair, Vice Chair, and Secretary of the Muncie Human Rights Commission. The Executive Director will serve as an ex-officio member to this group. The Chair may, if necessary, invite the input of other individuals in the deliberations of the Executive Committee.

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

*Owner.* Includes the lessor, sub-lessor, assignor or managing agent, or other persons having the right of ownership or possession or the right to sell, rent, or lease any housing accommodation.

*Person.* One or more individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, mutual companies, joint stock companies, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries, and other groups or persons. The foregoing includes members, representatives, officers, directors, and agents.

*Real estate operator.* Any person, partnership, association, or corporation who for a fee or other valuable consideration, sells, purchases, exchanges or rents, negotiates, or offers, or attempts to negotiate the sale, purchase, exchange, or rental of the real property of another, or collects rental of the use of real property of another.

(B) *Exemptions.*

- (1) With respect to employment discrimination, employers of six or less employees are exempt from the provision of this division.
- (2) It shall not be deemed discrimination for any not-for-profit corporation or association organized exclusively for religious purposes or for any school, educational or charitable institution owned or conducted by or affiliated with a church or religious institution to devote its resources to its owner religion or denomination, or to give preference to members of such institution or educationally to promote exclusively the religious principles for which it is established or maintained.
- (3) It shall not be deemed discrimination on account of disability for any governmental agency or not-for-profit corporation established for the purpose of offering or providing education, training or other social services and benefits to disabled persons or to give a preference to disabled persons with respect to such education, training or social services and benefits.

(Ord. No. 9-15, § 1(Exh. A), 4-6-15)

**Sec. 34.82. Human rights commission created.**

To assist in the elimination of discrimination in the city, there is hereby created a commission to be known as the Muncie Human Rights Commission.

- (A) The Commission shall be composed of nine members serving without compensation, except members may be reimbursed for authorized expense incurred in the performance of their duties, providing there are sufficient monies in the Human Rights Commission budget to cover such expenses.
- (B) The members shall be broadly representative of the economic, racial, ethnic, age, religious, sex, sexual orientation, gender

identity, disabled, ancestry, national origin, or United States military service veteran status populations in the city.

(C) Each member shall be a registered voter in, and resident of the city.  
(Ord. No. 9-15, § 1(Exh. A), 4-6-15)

**Sec. 34.83. Term of office.**

(A) The term of each member shall be three years commencing June 1. No member may serve more than two full consecutive terms.

(B) Future appointments. The Mayor shall appoint six members and the Common Council shall appoint three members. Terms of office of the present Commission are staggered. On June 1 of each year, there shall be three expirations and three appointments. Of these three appointments, two shall be made by the Mayor and one shall be made by the Common Council.

(C) In the event of death, removal, or resignation of any member, the member's successor shall be appointed by the Mayor or the Common Council, whichever originally appointed the vacating member, to serve for the unexpired period of the vacated term.

(D) A member who is absent from three consecutive regular meetings of the Commission or four in a calendar year without good and sufficient cause, will be removed from the Commission. In this case the vacancy caused by the removal shall be filled as in other vacancies.

(E) Either the Mayor or the Common Council shall, at any time, have the right to remove any member of the Commission appointed by him or it with cause.

(Ord. No. 9-15, § 1(Exh. A), 4-6-15)

**Sec. 34.84. Officers.**

(A) The Commission shall elect a Chair at the annual meetings and shall also elect such other officers as the Commission shall desire from among their members. They shall serve until noon of the succeeding January 1.

(B) The Commission shall appoint an Executive Director who shall serve and be responsible to the Human Rights Commission for daily operations of the Commission and other related duties as assigned by the Commission.

(C) The Chair or the Executive Director act as the official representative and spokesperson for the Commission. No Commissioner shall speak for the Commission unless designated by the Chair or the Executive Director.

(Ord. No. 9-15, § 1(Exh. A), 4-6-15)

**Sec. 34.85. Meetings.**

(A) The Commission shall meet once each month at a regularly published time and place and shall hold special meetings as the Chair deems necessary or at the request of a majority of its members. All regularly scheduled meetings shall be open to the public.

(B) A quorum consisting of five (5) Commissioners must be present in order to conduct any business at the regular monthly meetings or special meetings.

(Ord. No. 9-15, § 1(Exh. A), 4-6-15)

**Sec. 34.86. Powers and duties.**

The Commission shall have the following powers and duties:

(A) All powers that may lawfully be conferred upon the Commission pursuant to the applicable provisions of Indiana law including the power to:

- (1) Investigate, conciliate and hear complaints;
- (2) Subpoena and compel the attendance of witnesses or production of pertinent documents and records, and make use of such other discovery techniques as shall be necessary to complete investigations or conduct full hearings as provided for in IC 4-22-1 et. seq. and Rule 28(F) of the Indiana Rules of Trial Procedure. Subpoena shall only be used in the investigative and hearing processes.
- (3) Administer oaths;

- (4) Examine witnesses;
- (5) Appoint hearing examiners or panels;
- (6) Make findings and recommendations;
- (7) Issue cease and desist orders requiring remedial action;
- (8) Order payment of actual damages, except that damages to be paid as a result discriminatory practices relating to employment shall be limited to lost wages, salaries, commissions, or fringe benefits;
- (9) Institute actions for appropriate legal or equitable relief in an appropriate court;
- (10) Employ an Executive Director and other staff personnel;
- (11) Adopt rules and regulations;
- (12) Initiate complaints, except that no person who initiates complaints may participate as a member of the agency in the hearing or disposition of the complaint; and
- (13) Conduct programs and activities via standing committees to carry out the purposes of the Muncie Human Rights Commission provided for in this subchapter within the territorial boundaries of the city.

(B) The Executive Director of the Human Rights Commission, will present, in writing, documentation for a subpoena to the City Attorney for the purpose of further conducting an investigation. The City Attorney shall review the documentation provided by the Human Rights Commission and then, in writing, inform the person or party to be subpoenaed. Upon receipt of notification, five (5) working days are allotted to show cause why the subpoena should not be issued. Appropriate weight shall be given to the information submitted by the person or party in question. The City Attorney will approve or deny the subpoena request based on documentation provided by the Human Rights

Commission and the person or party involved. If approved, then the subpoena may be issued as requested by the Executive Director. If denied, then no subpoena shall be issued.

- (C) The Commission shall endeavor to keep itself fully informed concerning the studies and findings of private organizations in respect to the practices falling within the Commission's jurisdiction.
  - (D) Commissioners must attend a minimum of two (2) training sessions per year. Failure to meet this minimum will result in the offending commissioner's removal from the Commission at year's end. Training for members of the Commission will be arranged by the Executive Director.
- (Ord. No. 9-15, § 1(Exh. A), 4-6-15)

**Sec. 34.87. Unlawful discriminatory practices.**

(A) It shall be unlawful for any person to commit any act of discriminatory practice as herein defined.

(B) Unlawful housing discrimination in the sale or rental of housing (including mobile homes) by any owner, or any real estate operator or any person employed by or acting on behalf of any real estate operator, is prohibited. It shall be an unlawful discriminatory housing practice for any owner, or any real estate operator or any person employed by or acting on behalf of any real estate operator:

- (1) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or to indicate such dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available, or otherwise make unavailable or deny, a dwelling to any person because of race, color, age, religion, sex, sexual orientation, gender identity, disability, ancestry, national origin, or United States military service veteran status;
- (2) To discriminate against any person in the terms, conditions, or privileges of sale or

rental of a dwelling, or in the provision of services or facilities in connection therewith, because race, color, age, religion, sex, sexual orientation, gender identity, disability, ancestry, national origin, or United States military service veteran status;

- (3) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, age, religion, sex, sexual orientation, gender identity, disability, ancestry, national origin, or United States military service veteran status, or an intention to make any such performance, limitation, or discrimination; and
  - (4) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, age, religion, sex, sexual orientation, gender identity, disability, ancestry, national origin, or United States military service veteran status.
- (C) Unlawful financial discrimination.
- (1) It shall be unlawful for any person, herein defined, whose business consists in whole or in part in the appraising of property of the making of real estate loans, to deny a loan or other financial assistance to an applicant therefor, or to discriminate against such applicant in the fixing or amount, interest rate, duration, or other terms or conditions or such loan or other financial assistance, or to make a lower appraisal valuation because of the race, color, age, religion, sex, sexual orientation, gender identity, disability, ancestry, national origin, or United States military service veteran status of such applicant, or of any person connected with such applicant in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance,

or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given; or because of the presence or absence or the prospective presence or absence within a neighborhood of concentrations of persons of a particular race, color, age, religion, sex, sexual orientation, gender identity, disability, ancestry, national origin, or United States military service veteran status.

- (2) It shall be unlawful for any creditor to discriminate against any person in any credit transaction because of race, color, age, religion, sex, sexual orientation, gender identity, disability, ancestry, national origin, or United States military service veteran status.

(D) Unlawful employment discrimination.

- (1) It shall be unlawful for any person or 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, tenure, or other terms, conditions, or privileges of employment, because of race, color, age, religion, sex, sexual orientation, gender identity, disability, ancestry, national origin, or United States military service veteran status.
- (2) It shall be unlawful for any person or employer to limit, segregate, or classify his/her employees or applicants for employment in any way which would deprive or tend to deprive, any individual of employment opportunities or otherwise adversely affect his or her status as an employer, because of such individual's race, color, age, religion, sex, sexual orientation, gender identity, disability, ancestry, national origin, or United States military service veteran status.
- (3) It shall be unlawful for any employer to fail to make reasonable accommodation to the known physical or mental limitations

of an otherwise qualified employee or prospective employee or 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 employer's business.

- (4) It shall be unlawful for any 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, color, age, religion, sex, sexual orientation, gender identity, disability, ancestry, national origin, or United States military service veteran status.
- (5) It shall be unlawful for any employment or agency to fail or refuse to refer for otherwise to discriminate his or her race, color, age, religion, sex, sexual orientation, gender identity, disability, ancestry, national origin, or United States military service veteran status.

(E) Unlawful labor organization discrimination. It shall be unlawful for a labor organization:

- (1) To exclude or expel from its membership, or otherwise to discriminate against, any individual because of race, color, age, religion, sex, sexual orientation, gender identity, disability, ancestry, national origin, or United States military service veteran status;
- (2) To 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 otherwise adversely affect his or her status as an employee or as an applicant for employment because of race, color, age, religion, sex, sexual orientation, gen-

der identity, disability, ancestry, national origin, or United States military service veteran status;

- (3) To cause or attempt to cause an employer to discriminate against an individual in violation of this action.

(F) Unlawful public place of accommodation or amusement discrimination. It shall be unlawful for any person or establishment which caters or offers its services or facilities or goods to the general public to discriminate against anyone because of race, color, age, religion, sex, sexual orientation, gender identity, disability, ancestry, national origin, or United States military service veteran status.

- (1) It shall be unlawful for any person to deny another or charge another a higher price than the regular rate for the full and equal enjoyment of any public place of accommodation or amusement because of his or her race, color, age, religion, sex, sexual orientation, gender identity, disability, ancestry, national origin, or United States military service veteran status.
- (2) It shall be unlawful for any person to directly or indirectly publish, circulate, display, or mail any written communication which he or she knows is to the effect that any of the facilities of any public place of accommodation or amusement will be denied to any person by reason of his or her race, color, age, religion, sex, sexual orientation, gender identity, disability, ancestry, national origin, or United States military service veteran status or that employment or against any individual on the basis of his or her race, color, age, religion, sex, sexual orientation, gender identity, disability, ancestry, national origin, or United States military service veteran status or that the patronage of a person is unwelcome, objectionable, or unacceptable for any of these reasons.
- (3) It shall be unlawful for any person of any place of public accommodation or amusement to refuse to permit a visually impaired, hearing impaired, or mobility impaired person to enter or use any such

accommodations as are available, for the reason that the person is being assisted by a dog specially trained to assist such person if:

- (a) The dog is wearing a harness or appropriate collar with identification; and
- (b) The person has presented, for inspection, credentials issued by a bona fide school for training such dogs.

(G) Unlawful discrimination in education institutions. It shall be unlawful for any person, establishment, or governmental agency regularly engaged in the offering of education services to discriminate against anyone because of race, color, age, religion, sex, sexual orientation, gender identity, disability, ancestry, national origin, or United States military service veteran status.

(H) Other unlawful practices:

- (1) It shall be unlawful for any person to aid, abet, incite, compel, or coerce the doing of any act declared by this subchapter to be unlawful.
- (2) It shall be unlawful for any person knowingly to obstruct the fair and lawful enforcement of this subchapter by coercing or intimidating any complainant or prospective complainant, or any witness to any act made unlawful herein, or by destroying any records, documents or other evidence relevant to any alleged unlawful discriminatory practice as defined herein, after such person has received actual notice of a discrimination charge or has been served notice of a complaint filed.
- (3) It shall be unlawful for any person to discriminate against any other person with regard to, or to deny any other person access to or opportunities in employment, real estate transactions, education, or public accommodations because any other person has opposed any practice made unlawful by this subchapter, or because other person has made a charge, testified, as-

sisted or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

(Ord. No. 9-15, § 1(Exh. A), 4-6-15)

**Secs. 34.88—34.94. Reserved.**

**DIVISION 6. INDUSTRIAL REVOLVING FUND BOARD**

**Sec. 34.95. Creation.**

An industrial revolving fund board (hereinafter referred to as the "board of directors") is created and established to administer the industrial revolving fund account (hereinafter referred to as the "fund account") and the industrial revolving fund account instrument of trust (hereinafter referred to as the "trust"). The trust shall be entered into by the city with The Merchants National Bank of Muncie, Indiana, as trustee (hereinafter with its successor or successors referred to as "trustee"), in order to facilitate the administration of the fund account.

(Ord. No. 322-77, 8-22-77)

**Sec. 34.96. Membership.**

(A) The board of directors shall act only through its members who shall consist of eight people who shall be appointed by the mayor and shall consist of the following:

- (1) The city attorney of the city;
- (2) The community development executive director;
- (3) A member of the common council elected by the common council;
- (4) A member of the economic sets in accordance with those directions and the terms of the trust.
- (5) A representative of the minority community appointed by the mayor;
- (6) A member of the Muncie-Delaware County Chamber of Commerce, nominated by the chamber of commerce board of directors and appointed by the mayor.
- (7) A member of organized labor appointed by the mayor;

(8) Trustee appointed by the mayor, who shall serve as an ex officio member having a voice but not a vote.

(B) If there is no office in these designated agencies or their equivalent successors, the director shall be a resident of the city.

(C) Each director shall hold office until the annual meeting of the board of directors and until his successor shall have been appointed and qualified. Any director may resign and such resignation shall become effective upon delivery of written notice thereof to the mayor and trustee. Upon appointment, the directors shall take an oath to faithfully perform their duties pursuant to sections 34.95 through 34.97 and applicable federal law and to elect one among them to serve as chairman of the board of directors and one among them to serve as secretary.

(D) In the event of resignation, disability, or death of any director, pending the proper appointment of his successor the remaining members of the board of directors may name a temporary member or members to hold office until such proper appointment is made.

(Ord. No. 322-77, 8-22-77; Ord. No. 2-92, 2-3-92)

**Sec. 34.97. Powers and duties of the board.**

(A) The board of directors shall have the sole power and authority to direct the administration of the fund account and shall act as the majority of its members shall decide. The board of directors shall give directions in writing to the trustee as to the administration of funds and assets of the trust and the trustee shall administer said funds and assets in accordance with those directions and the terms of the trust.

(B) In view of the purposes of the fund account, the board of directors is permitted to take more risk than normally might be taken by lenders in the area and to make loans to promote those purposes though the credit-worthiness of the borrower might not be sufficient to justify lending by conventional lenders. As a consequence, no member of the board of directors, the trust or trustee, and/or the city shall be personally liable for any losses sustained by such fund account due to the failure of a borrower to repay

such loans or for the loss or depreciation of the security securing any such loans. However, any loan utilization of the trust funds after the initial loan to the initial beneficiaries under the adjustment strategy is specifically subject to the prior review and concurrence of the assistant secretary for economic development or his designee to assure that the use of such funds is consistent with the requirements of the economic development administration.

(C) All decisions of the board of directors as to the facts of any case and the meaning and intent of any of the provisions of the trust or of their application to any case shall be final and conclusive. In exercising the broad discretionary powers herein granted, it is the intention of sections 34.95 through 34.97 that the board of directors may act solely upon the best judgment of its members and that the members of the board of directors shall not be liable to the federal government, the city, or any applicant or any other person whomsoever for errors of judgment or for depreciation or losses of the trust assets or for failure of such assets to produce greater earnings, interest, or profits so long as those members exercise their discretion in good faith. Each member of the board of directors shall be bound by the acts of the board of directors unless within 30 days after such action is taken, such opposing member files with the board of directors a written statement of his disapproval of the act and did not approve the act in the first instance. Likewise, the city shall not be liable to the federal government for errors in judgment of members of the board of directors or for depreciation or losses of the trust assets or for failure of such assets to produce greater earnings, interest, or profits.

(D) Sections 34.95 through 34.97 shall incorporate by reference all terms and conditions of the EDA Grant Agreement (Project No. 06-19-01414) and directs the board members to comply with all grant terms and conditions and the requirements of Title IX of the Public Works and Economic Development Act of 1965, as amended (P.L. 98-136; 42 U.S.C. 3121 et seq.) and any further amendments to that act or other federal requirements.

(E) Members of the board of directors shall serve without compensation and without the requirement to file any bond. However, any expenses related to the business of the trust such as, but not by way of limitation, trustee's fees and expenses, secretarial, accounting, legal, supplies, and quarters, shall be paid by the trust as a legitimate expense upon specific authorization of the board of directors.

(Ord. No. 322-77, 8-22-77)

**Secs. 34.98, 34.99. Reserved.**



**CHAPTER 74. BICYCLES AND MOTORCYCLES**

Division 1. Bicycles

- Sec. 74.01. Purpose; application.
- Sec. 74.02. Definitions.
- Sec. 74.03. Children and wards.
- Sec. 74.04. Riding on public roadways.
- Sec. 74.05. Seat; passengers.
- Sec. 74.06. Hitching rides on motor vehicles.
- Sec. 74.07. Riding two abreast.
- Sec. 74.08. Carrying packages.
- Sec. 74.09. Audible signals.
- Sec. 74.10. Lights, reflectors, brake.
- Sec. 74.11. Traffic rules.
- Sec. 74.12. Bicycle operation and safe practices.
- Sec. 74.13. Bicycle parking.
- Sec. 74.14. Designation of bicycle lanes and paths.
- Sec. 74.15. Restricted use of bicycle paths or designated lanes.
- Sec. 74.17. Harassment of bicyclists.
- Sec. 74.18. Advisory committee.
- Sec. 74.19. Penalty.
- Secs. 74.20—74.24. Reserved.

Division 2. Motorcycles

- Sec. 74.25. Operator's license.
- Sec. 74.26. Passengers; packages; traffic regulations.
- Sec. 74.27. Brakes; equipment.
- Sec. 74.28. License required.
- Sec. 74.99. Reserved.

**DIVISION 1. BICYCLES\***

**Sec. 74.01. Purpose; application.**

There is an increasing intensity of bicycle use throughout the city for purposes of recreation, business, school attendance, and the achievement of better health of a substantial number of citizens of all ages. This division promotes safety of all persons operating bicycles upon the streets of the city; to achieve greater harmony between motor and bicycle traffic moving upon its streets; and to aid in permitting a more orderly flow of bicycle traffic upon its streets in full accord with a prescribed set of standards designed to maintain such order. This division applies to the regulation

**\*Editor's note**—Ord. No. 6-15, § 1(Exh. A), adopted April 6, 2015, repealed former Div. 1, §§ 74.01—74.17, in its entirety and enacted new provisions as herein set out. Former Div. 1 pertained to similar subject matter and derived from the Code of 1968, §§ 76.01—76.15, 76.99.

regarding bicycle use within the City of Muncie in accordance with the regulation of bicycles under Indiana Code § 9-21-11, et. seq. (Ord. No. 6-15, § 1(Exh. A), 4-6-15)

**Sec. 74.02. Definitions.**

(A) "Bicycle." Human powered vehicle with two or more wheels designed to transport, by the action of pedaling. Such term may include a bicycle with an electric motor assist mechanism, as long as the primary mode of forward movement is pedaling.

(B) "Bicycle lane." A designated lane on a public roadway that is for the sole use of bicycle traffic and designated by striping and symbols.

(C) "Bicycle path." A designated path, physically separate from the public roadway set aside for the use of cyclists or pedestrians. Also referred to as a "cycle track," "multi-use path", or "greenway."

(D) "Motor vehicle." Any vehicle with an internal combustion or electric motor that provides forward motion and is not human powered.

(E) "Operator." A person who travels on a bicycle seated on a bicycle seat from which that person is intended to and can pedal the bicycle.

(F) "Passenger." A person who travels on a bicycle in any manner except as an operator.

(G) "Child carrier." A safety-tested seat designed and manufactured for the sole purpose of safe carrying of infants, toddlers or small children when securely fastened to a bicycle.

(H) "Harassment." Any act which shall unreasonably disturb a bicyclist or cause a bicyclist to have a reasonable fear of imminent danger, including but not limited to:

- (1) Making threats or engaging in hate speech towards bicyclists;
- (2) Throwing any object at or towards a bicyclist;
- (3) Increasing speed, decreasing following distance, or decreasing lateral (lane) separation when approaching, driving alongside or overtaking bicyclists;

- (4) Excessive, unwarranted or unlawful use of a horn in proximity to bicyclists;
- (5) Taking any action to aggressively swerve towards bicyclists;
- (6) Attempting to stop or block the path of a bicyclist;
- (7) Attempting to force a bicyclist into a fixed obstacle, ditch, curb, parked car or other impediment; or
- (8) Engaging in sharp acceleration for the purpose of creating a greater than normal accumulation of vehicle exhaust.

(I) "Public roadway." Any road, highway, street or alley located within public right of way used for motorized and non-motorized travel.  
(Ord. No. 6-15, § 1(Exh. A), 4-6-15)

**Sec. 74.03. Children and wards.**

(A) The parent of any child and the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate any of the provisions of this chapter.

(B) These regulations applicable to bicycles shall apply whenever a bicycle is operated upon any public roadway or upon any path set aside for the exclusive use of bicycles, subject to those exceptions stated herein.  
(Ord. No. 6-15, § 1(Exh. A), 4-6-15)

**Sec. 74.04. Riding on public roadways.**

Every person riding a bicycle upon a public roadway shall have all of the rights and all of the duties under the provisions of this title applicable to the driver of a vehicle, except as to special regulations of §§ 74.01 through 74.09, and except as to those provisions of this title which by their nature can have no application.  
(Ord. No. 6-15, § 1(Exh. A), 4-6-15)

**Sec. 74.05. Seat; passengers.**

(A) A person propelling a bicycle shall not ride other than upon the permanent and regular seat attached thereto, nor carry any other person upon the bicycle otherwise than upon a firmly attached and regular seat thereon, nor shall any person ride upon a bicycle otherwise than as above stated.

(B) No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

(C) Child carriers shall be securely fastened to the frame of the bicycle.  
(Ord. No. 6-15, § 1(Exh. A), 4-6-15)

**Sec. 74.06. Hitching rides on motor vehicles.**

Any person upon any bicycle, coaster, roller skates, or toy vehicle shall not attach the same or himself to any vehicle upon a public roadway.  
(Ord. No. 6-15, § 1(Exh. A), 4-6-15)

**Sec. 74.07. Riding two abreast.**

Persons riding bicycles upon a public roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles. Groups of more than two cyclists shall not ride more than two abreast, and are not to unnecessarily impede traffic to the point of causing a traffic hazard.  
(Ord. No. 6-15, § 1(Exh. A), 4-6-15)

**Sec. 74.08. Carrying packages.**

(A) No person riding a bicycle shall carry any package, bundle, or article which prevents the rider from keeping both hands upon the handlebars; nor shall any person place upon a bicycle any package, bundle, or article in a manner as to obstruct the vision of the person.

(B) Carts especially manufactured to be towed by bicycles are permitted.  
(Ord. No. 6-15, § 1(Exh. A), 4-6-15)

**Sec. 74.09. Audible signals.**

No person shall ride a bicycle unless it is equipped with a bell or other device capable of giving a signal audible for a distance of at least 100 feet, except that no bicycle shall be equipped with, nor shall any person use upon a bicycle any siren or whistle.  
(Ord. No. 6-15, § 1(Exh. A), 4-6-15)

**Sec. 74.10. Lights, reflectors, brake.**

(A) Every bicycle operated on a public roadway from one-half hour after sunset until one-half hour before sunrise shall be equipped with a lamp on the front exhibiting a white light visible from a distance of at least 500 feet to the front and with a lamp on the rear exhibiting a red light visible from a distance of 500 feet to the rear; except that a red reflector meeting the requirements of this title may be used in lieu of a rear light.

(B) Every bicycle shall be equipped with an adequate brake when used on a public roadway, bicycle path or lane.

(C) Bicycles offered for rent by rental agency shall be equipped by the agency with all the safety equipment required in this chapter and shall be kept in good and safe working order. (Ord. No. 6-15, § 1(Exh. A), 4-6-15)

**Sec. 74.11. Traffic rules.**

The operator of any bicycle upon any public roadway shall observe each and all of the regulations and requirements of this title as these apply to the usage of the right lane of the public roadway in travel, the stoppage and proceeding in accord with traffic signals, and the utilization of prescribed manual signs for the guidance of other traffic.

(Ord. No. 6-15, § 1(Exh. A), 4-6-15)

**Sec. 74.12. Bicycle operation and safe practices.**

(A) A person operating a bicycle upon a public roadway shall ride as near to the right-hand side of the roadway as reasonable and prudent. This section does not require a person operating a bicycle to ride at the edge of the roadway when it is unreasonable or unsafe to do so. Conditions that may require riding away from the edge of the roadway include when necessary to avoid fixed or moving objects, parked or moving vehicles, surface hazards, or if it is otherwise unsafe or impracticable to do so, including if the lane is too narrow for the bicycle and an overtaking vehicle to travel safely side by side within the lane.

(B) No person operating a bicycle shall remove both hands from the handlebars, or feet from the pedals, while the vehicle is in motion, or practice any acrobatic or fancy riding on any street; nor shall any person operating a bicycle upon a public roadway participate in any race of speed or endurance in a contest with another bicycle or vehicle unless a race of speed or endurance is part of a City permitted event.

(C) Wherever a bicycle path or designated painted bicycle lane has been provided adjacent to a public roadway and in reasonable condition, bicycle riders are urged to use these paths instead of the roadway, but are not required to do so as long as they adhere to subsection 74.10(A).

(D) No person shall operate a bicycle at a speed greater than the maximum speed provided for vehicles at the particular location or at a speed greater than is reasonable and prudent under existing conditions.

(E) When emerging from an alley, driveway, or building the operator of a bicycle shall, upon approaching a sidewalk or sidewalk area extending across the alleyway, driveway, or building, yield the right-of-way to all pedestrians approaching on the sidewalk or sidewalk area, and upon entering the public roadway, shall yield the right-of-way to all approaching vehicles.

(F) No person shall park a bicycle upon a street other than upon the public roadway against the curb, or upon the sidewalk in a rack to support the bicycle, or against a building or at the curb in a manner as to hinder or obstruct pedestrian traffic.

(G) No bicycle shall be operated upon any sidewalk in the city unless otherwise designated except those operated by persons 12 years of age or less. These persons, however, shall yield the right-of-way to any and all pedestrians.

(Ord. No. 6-15, § 1(Exh. A), 4-6-15)

**Sec. 74.13. Bicycle parking.**

(A) No person shall park a bicycle upon a sidewalk in such a manner so as to unduly interfere with pedestrian traffic, or upon a public roadway so as to unduly interfere with vehicular traffic.

(B) Bicycles shall be parked in such a manner as not to interfere with building entrances.

(C) Bicycle racks may be installed in the public rights-of-way only upon application for a no charge permit from the office of the city building commissioner's office and approval of the board of public works. All bicycle racks constructed pursuant to this section shall be located, constructed, and maintained in accordance with the specifications of the city building commissioner's Office who shall be responsible for keeping sufficient records of the permits and specifications.

(Ord. No. 6-15, § 1(Exh. A), 4-6-15)

**Sec. 74.14. Designation of bicycle lanes and paths.**

Design of bicycle lanes and paths shall follow reasonable industry standards for user safety. New bicycle lane or path designations or changes to existing infrastructure shall be presented to the board of public works for approval.

(Ord. No. 6-15, § 1(Exh. A), 4-6-15)

**Sec. 74.15. Restricted use of bicycle paths or designated lanes.**

(A) No persons shall drive a motor vehicle within or on a bicycle path or lane designated in accordance with section 74.13 of this chapter except for the limited purposes of either making a turn or accessing adjacent on-street parking spaces, alleys, private roads, or driveways. This exception only applies when the bicycle lane is clear of cyclists.

(B) No persons shall block a designated bicycle lane with a motor vehicle or any other object.

(C) Motorists or passengers parked within on-street parking spaces that are adjacent to designated bicycle lanes shall take reasonable care not to open the car door(s) into the bicycle lane unless it is clear of cyclists.

(D) Bicycle paths shall be used exclusively by riders of bicycles who must obey and observe all laws and rules of the road within the bicycle paths in addition to all other traffic-control devices. Bicycle paths are not to be used by riders of motorized bicycles.

(E) Greenways or multi-use paths are designated for the use of both bicyclists and pedestrians. Bicyclists shall yield the right-of-way to pedestrians on these greenways or multi-use paths. (Ord. No. 6-15, § 1(Exh. A), 4-6-15)

**Sec. 74.16. Three-foot passing rule.**

This section applies to cyclists and motor vehicles on shared public roadways without designated bike lanes.

(A) The driver of a motor vehicle overtaking and passing a bicycle that is proceeding in the same direction on a public roadway shall pass in compliance with the requirements of this article applicable to overtaking and passing a vehicle, and shall do so at a safe distance that does not interfere with the safe operation of the overtaken bicycle, having due regard for the size and speed of the motor vehicle and the bicycle, traffic conditions, weather, visibility, and the surface and width of the public roadway.

(B) A driver of a motor vehicle shall not overtake or pass a bicycle proceeding in the same direction on a public roadway at a distance of less than three feet between any part of the motor vehicle and any part of the bicycle or its operator.

(C) If the driver of a motor vehicle is unable to comply with subdivision (B), due to traffic or roadway conditions, the driver shall slow to a speed that is reasonable and prudent, and may pass only when doing so would not endanger the safety of the operator of the bicycle, taking into account the size and speed of the motor vehicle and bicycle, traffic conditions, weather, visibility, and surface and width of the public roadway.

(Ord. No. 6-15, § 1(Exh. A), 4-6-15)

**Sec. 74.17. Harassment of bicyclists.**

It shall be unlawful to engage in any harassment of a bicyclist operating a bicycle on or adjacent to a public roadway, path, sidewalk or other public or private area.

(Ord. No. 6-15, § 1(Exh. A), 4-6-15)

**Sec. 74.18. Advisory committee.**

(A) *Establishment.* A bicycle and pedestrian advisory committee is hereby established. Members appointed shall represent the following institutions, disciplines, industries and interests: transportation planning; health/medical; Ball State; bicycle advocates/clubs; economic development; law enforcement; community planning; trails/greenways. Once formed, the committee shall be administered by and through the Metropolitan Planning Organization (MPO) for the Muncie Urbanized Area and will be known as the Bicycle and Pedestrian Advisory Committee.

**(B) Membership and terms.**

- (i) The committee shall consist of nine members. Five members shall be appointed as follows:
    - (a) Four members appointed by the mayor of the City of Muncie;
    - (b) One member appointed by the Muncie City Council.
    - (c) Four members shall serve by virtue of their position as follows:
      - 1. The superintendent of the Muncie Parks and Recreation Department;
      - 2. The superintendent of the Muncie Street Department;
      - 3. The chief executive officer of Cardinal Greenway, Inc.;
      - 4. The metropolitan planning organization director.
  - (ii) Appointed members shall serve three-year terms and are eligible for reappointment. Members serving by virtue of their position may appoint an official alternative to serve in their absence. Once established, the members seek advice from ex-officio members to provide advice, expertise and services as deemed necessary.
- (C) *Purpose and responsibilities.* The committee is formed to provide advice and recommendations to other departments, agencies, boards and commissions on matters that promote safe alternative transportation such as bicycling and walk-

ing. The committee may develop programs, projects, and other initiatives to carry out the purpose of this division and section.

(Ord. No. 6-15, § 1(Exh. A), 4-6-15)

**Sec. 74.19. Penalty.**

Every person convicted of a punishable violation of any of the provisions of this division for which another penalty is not provided shall for first conviction thereof be punishable by a fine of not more than \$100.00; for a second such conviction within one year thereafter, the person shall be punishable by a fine of not more than \$200.00; upon a third or subsequent conviction within one year after the first conviction, the person shall be punishable by a fine of not more than \$500.00. Fines captured through violations of this division shall be deposited in a fund dedicated for the use and at the discretion of the bicycle and pedestrian advisory committee.

(Ord. No. 6-15, § 1(Exh. A), 4-6-15)

**Secs. 74.20—74.24. Reserved.**

## DIVISION 2. MOTORCYCLES

**Sec. 74.25. Operator's license.**

No resident person shall drive or operate a motorcycle on the public streets or highways of this state until the driver or operator shall have secured a regular operator's license from the bureau of motor vehicles of this state.

**State law reference**—Similar provisions, IC 9-8-9-1.

**Cross reference**—Penalty, see § 70.99.

**Sec. 74.26. Passengers; packages; traffic regulations.**

In addition to all other laws and regulations applicable to the driving and operation of motorcycles on the public streets and highways, the following shall also apply:

- (A) Not more than one passenger in addition to the operator shall be carried by a motorcycle having only two wheels in contact with the ground or pavement, and no passengers shall be carried in addition to

the driver or operator except upon a firmly attached and regular seat designed for passenger use.

- (B) No passenger shall be carried on a motorcycle in a position that interferes with the operation or control of the motorcycle or the view of the operator.
- (C) No person operating a motorcycle shall carry any packages, bundles, or other articles which prevent the operator from keeping both hands on the handlebars.
- (D) No person shall drive, operate, or ride as a passenger on any motorcycle having only two wheels in contact with the ground or pavement in any position other than astride the seat or saddle provided.
- (E) Head lamps shall be illuminated at all times when a motorcycle is in operation.
- (F) All motor vehicles, including motorcycles, are entitled to the full use of a traffic lane and no vehicle shall be driven or operated in such a manner so as to deprive any other vehicle of the full use of a traffic lane provided that motorcycles may, with the consent of both drivers, be operated not more than two abreast in a single traffic lane.
- (G) All other traffic regulations adopted before or after the effective date of this traffic code and all rights and duties incurred therefrom which apply to motor vehicle drivers or operators generally, shall apply to the drivers and operators of motorcycles, except those which expressly do not apply or which by their nature can have no application.
- (H) A motorcycle with a design speed of not more than 30 miles per hour and having a seat, but not a saddle, may not be operated on the interstate defense network of highways or on any public highway outside the limits of a city or town, as defined in IC 36-1-2.

(Code 1968, § 72.53)

**Cross reference**—Penalty, see § 70.99.

**State law reference**—Similar provisions, IC 9-8-9-2.

#### **Sec. 74.27. Brakes; equipment.**

No motorcycle shall be operated on the public streets or highways by a resident of this state which is:

- (A) Equipped with handlebars that rise more than 15 inches above the level of the driver's seat or saddle, when occupied.
- (B) Not equipped with brakes in good working order on both front and rear wheels.
- (C) Not equipped with footrests or pegs for both operator and passengers.
- (D) Not equipped with lamps and reflectors meeting the standards of the United States Department of Commerce, as amended.

**State law reference**—Similar provisions, IC 9-8-9-4.

**Cross reference**—Penalty, see § 70.99.

#### **Sec. 74.28. License required.**

No person shall rent, lease, or furnish a motorcycle to any person for use on the public streets and highways who is not regularly licensed to operate a motor vehicle, by the state, if a resident, and by the state of which he is a resident, if a nonresident.

- (A) It shall be unlawful for a person to whom a motorcycle is rented, leased, or furnished to rent, sublease, or otherwise authorize the use of the motorcycle on the streets and highways to any person who is not licensed to operate a vehicle in this state.
- (B) It shall be unlawful to rent, lease, or furnish any motorcycle that is not in safe operating condition.

**State law reference**—Similar provisions, IC 9-8-9-5.

**Cross reference**—Penalty, see § 70.99.

#### **Sec. 74.99. Reserved.**

**Editor's note**—Ord. No. 6-15, § 1(Exh. A), adopted April 6, 2015, has been treated by the editor as superseding former § 74.99 which pertained to penalty provisions for the violation of various sections of Div. 1 of this chapter. Former § 74.99 did not include a legislative history note.

**77.33.120 Precedence of no parking zones.**

The residential neighborhood permit parking zones do not take precedence over temporary or permanent no parking zones posted by the street department, engineering department, or police department for tree removal, snow removal, street sweeping, or other actions deemed necessary by the city.

(Ord. No. 25-97, § I, 8-4-97)

**Sec. 77.34. Use of city parking meters.****(A) Prohibited conduct.**

- (1) Any vehicle parked or standing on a space in which the parking meter assigned does not indicate that sufficient money has been deposited in the meter shall have a violation notice or uniform traffic ticket placed thereon indicating the offense of overtime parking.
- (2) It shall be prima facie evidence that insufficient money has been deposited in a parking meter if the meter indicates that a violation has occurred.

(B) *Administrator.* Metered parking facilities shall be under the supervision and jurisdiction of the Muncie Police Department and its duly appointed and acting officers.

**(C) Penalties.**

- (1) The parking of a motor vehicle on a space in which a violation is indicated by the parking meter is herewith declared to be an offense punishable by a fine or penalty as outlined in § 77.99.
- (2) The parking of a motor vehicle on a space in which a violation is indicated by the parking meter may be removed or caused to be removed by an officer of the police department after the passage of a reasonable amount of time, but in no event less than four hours.
- (3) The owner of such vehicle shall be responsible for all towing, storage, and other charges resulting from the removal of the vehicle.

**(D) Disposition of funds.**

- (1) An alternate transportation fund shall be established and the revenues derived from paid parking facilities shall be deposited daily in such a fund as received. The revenues shall not become or be a part of the general revenue or general fund of the City of Muncie. The contents of this fund shall be used for the operations, maintenance, improvements, and acquisitions of additional parking facilities as may be determined by the board of public works and safety, subject to approval of the common council.
  - (2) The rate for use of parking facilities for which a parking meter is assigned shall be \$0.25 per hour.
- (Ord. No. 41-04, §§ I—III, V, 10-4-04; Ord. No. 42-14, § 2, 1-5-15)

**Secs. 77.35—77.39. Reserved.****DIVISION 2. SNOW EMERGENCY****Sec. 77.40. Snow emergency regulations.**

Sections 77.40 through 77.48 shall hereafter be referred to as "snow control route ordinance." (Code 1968, § 75.40)

**Sec. 77.41. Public policy declared.**

It is declared to be in the best interest of the public policy and the public safety of the city to regulate and restrict the parking of vehicles on public streets during snow emergencies. (Code 1968, § 75.41)

**Sec. 77.42. Snow emergency defined; amendments.**

(A) A snow emergency is declared to be a period of time after a forecast by the United States Weather Bureau during and after a snowfall during which vehicular traffic is expected to be particularly hazardous or congested due to the elements, and during which period of time the parking of the vehicles could hinder, delay, and obstruct the safe flow of traffic and the proper cleaning, clearing, and making safe of certain

heavily traveled public streets of this city, which streets shall be designated snow-control routes and are as follows:

Adams Street from Madison Street to State Road 23.

Batavia from 12th Street to Nichols Street.

Bellaire Avenue from McGalliard Road to Purdue Avenue.

Bennett Street from Jackson Street to Centennial Avenue.

Bethel Avenue from Chadam Lane to Wheeling Avenue.

Bethel Pike from Chadam Lane to city limits.

Broadway Avenue from Hackley Street to Rigin Road.

Bunch Boulevard from Broadway Avenue to Jackson Street.

Burlington Drive from Ohio Avenue to city limits.

Centennial Avenue from Bethel Avenue to Muncie By-Pass.

Chadam Lane from Bethel Avenue to Bethel Pike.

Charles Street from Liberty Street to Madison Street.

Elgin Street from Centennial Avenue to McGalliard Road.

Elliott Street from Willard Street to 8th Street.

Elm Street from Adams Street to Jackson Street.

Everett Road from Tillotson Extension to Rigin Road.

Franklin Street from Seymour Street to High Street Bridge.

Gavin Street from Bunch Boulevard to Centennial Avenue.

Gilbert Street from Mulberry Street to High Street.

Gilbert Street from Tillotson Avenue to White River Boulevard.

Godman Avenue from Nichols to Stradling Road.

Granville Avenue from Walnut Street Bridge to McGalliard Road.

High Street from Seymour Street to High Street Bridge.

Highland Avenue from Broadway Avenue to Hodson Avenue.

Howard Street from Liberty Street to Elm Street.

Hoyt Avenue from Liberty Street to city limits.

Hackley Street from Jackson Street to 26th Street.

Jackson Street from Kilgore Avenue to city limits.

Jackson Street from Kilgore Avenue to Morrison Road.

Jefferson Street from Seymour Street to Wysor Street.

Kirby Street from Elm Street to Macedonia Avenue.

Liberty Street from Gilbert Street to 12th Street.

Linden Avenue from Bethel to Riverside Avenue.

Macedonia Avenue from Bunch Boulevard to Centennial Avenue.

Macedonia Avenue from Ohio Avenue to city limits.

McGalliard Road from Tillotson Avenue to Muncie By-Pass.

Madison Street from Wysor Street to city limits.

Martin Luther King Jr. Boulevard from Memorial Drive to Tillotson Avenue.

Martin Street from Riverside to River Boulevard.

Meeker Avenue from Memorial Drive to 29th Street.

Meeks Avenue from Washington Street Bridge to North Street.

entering the intersection, except when directed to proceed by a police officer or traffic-control signal.

(Code 1968, §§ 71.08 and 72.20)

**Cross reference**—Penalty, see § 70.99.

**Sec. 79.09. Authority to erect stop signs.**

Whenever this traffic code or any ordinance of the city designates and describes a through street, the city traffic engineer shall place and maintain a stop sign on each and every street intersecting the through street, or intersecting that portion thereof described and designated as such by this traffic code or any such ordinance of the city.

(Code 1968, § 71.09)

**Sec. 79.10. Intersections where stop required.**

The city traffic engineer, whenever the council shall determine and designate intersections where particular hazards exist upon other than through streets, and determines whether vehicles shall stop at one or more entrances to any such stop intersection, shall erect a stop sign at every such place where a stop is required.

(Code 1968, § 71.10)

**Sec. 79.11. Signs to bear the word "stop".**

Every stop sign erected pursuant to this division shall bear the word "stop" in letters not less than six inches in height and the sign at nighttime shall be rendered luminous by steady or flashing internal illumination, by a fixed floodlight projected on the face of the sign or by efficient reflection elements on the face of the sign.

(Code 1968, § 71.11)

**Sec. 79.12. Authority to install traffic-control devices.**

The city traffic engineer shall place and maintain traffic control signs, signals, and devices when and as required under this traffic code and other traffic ordinances of the city to make effective the provisions of this traffic code and other ordinances.

(Code 1968, § 71.12)

**Sec. 79.13. Manual and specifications for traffic-control devices.**

All traffic-control signs, signals, and devices shall conform to the manual and specifications approved by the state highway commission. All signs and signals required hereunder for a particular purpose shall so far as practicable be uniform as to type and location throughout the city. All traffic-control devices so erected and not inconsistent with the provisions of state law or this traffic code shall be official traffic-control devices.

(Code 1968, § 71.13)

**Sec. 79.14. Authority of board of public works and safety to make regulations.**

The board of public works and safety is empowered to make regulations necessary to make effective the provisions of this traffic code and to make and enforce temporary or experimental regulations to cover emergencies or special conditions. No such temporary or experimental regulations shall remain in effect for more than 60 days.

(Code 1968, § 71.14)

**Sec. 79.15. Authority of police and fire officials.**

(A) It shall be the duty of the officers of the police department or those officers as are assigned by the chief of police to enforce all street traffic laws of the city and all state vehicle laws applicable to street traffic in the city.

(B) Officers of the police department or those officers as are assigned by the chief of police are authorized to direct all traffic by voice, hand, or signal in conformance with the traffic laws. However, in the event of a fire or other emergency, or to expedite traffic, or to safeguard pedestrians, officers of the police department may direct traffic as conditions may require, notwithstanding the provisions of the traffic laws.

(C) Officers of the fire department, when at the scene of a fire, may direct or assist the police in directing traffic thereat or in the immediate vicinity.

(Code 1968, § 71.15)

**Sec. 79.16. Traffic administration; code enforcement.**

The provisions of:

- (A) Chapter 76, Abandoned Vehicles;
- (B) Chapter 77, Parking Regulations;
- (C) Chapter 130, sections 130.01 through 130.21 inclusive.

Shall be enforced by a member of the Muncie Police Department and its duly appointed and acting officers.  
(Ord. No. 34-93, 7-12-93; Ord. No. 42-14, § 1, 1-5-15)

**Secs. 79.17—79.19. Reserved.**

DIVISION 2. ENFORCEMENT

**Sec. 79.20. Failure to obey notice of summons.**

Any person who violates his written promise to appear, given to an officer upon arrest for any traffic violation, is guilty of a misdemeanor regardless of the disposition of the charge of which he was originally arrested.  
(Code 1968, § 71.50)  
**Cross reference**—Penalty, § 70.99.

**Sec. 79.21. Notice on illegally parked vehicle.**

Whenever any motor vehicle without a driver is found parked or stopped in violation of any of the restrictions imposed by this traffic code or other ordinance of the city or by state law, the officer finding the vehicle shall take its registration number and may take any other information displayed on the vehicle that may identify its user, and shall conspicuously affix to the vehicle a notice in writing on a form provided by the city for the driver to answer to the charge against him within five days, during the hours and at a place specified in the notice. The officer shall send one copy of the notice to the traffic division.  
(Code 1968, § 71.51)

**Sec. 79.22. Failure to comply with notice attached to parked vehicles.**

If a violator of the restrictions on stopping, standing, or parking under the traffic laws, this traffic code, or other ordinances does not appear in response to a notice affixed to the motor vehicle within a period of five days, the traffic division shall send to the owner of the motor vehicle to which the notice was affixed a letter informing him of the violation and warning him that in the event the letter is disregarded for a period of five days a complaint will be filed and a warrant of arrest issued.  
(Code 1968, § 71.52)

**Sec. 79.23. Presumption in reference to illegal parking.**

(A) In any prosecution charging a violation of any law or regulation governing the standing or parking of a vehicle, proof that the particular vehicle described in the complaint was parked in violation of any such law or regulation, together with proof that the defendant named in the complaint was, at the time of the parking, the registered owner of the vehicle, shall constitute in evidence a prima facie presumption that the registered owner of the vehicle was the person that parked or placed the vehicle at the point where, and for the time during which, the violation occurred. The presumption may be rebutted by any proper admissible evidence of probative effect.

(B) The foregoing stated presumption shall apply only when the procedure as prescribed in section 79.21 and 79.22 of this chapter has been followed.  
(Code 1968, § 71.53)

**Sec. 79.24. When complaint to be issued.**

In the event any person fails to comply with a notice given to the person attached to a vehicle, or fails to make appearance pursuant to a summons directing an appearance in the traffic division, the traffic division shall forthwith have a complaint entered against the person and secure a warrant for his arrest.  
(Code 1968, § 71.54)

**Sec. 79.25. Disposition of traffic fines and forfeitures.**

All fines or forfeitures collected upon conviction or upon the forfeiture of bail of any person charged with a violation of any of the provisions of this traffic code shall be paid into the office of the city controller and disposed of according to law as in all other city court collections.

(Code 1968, § 71.55)

**Sec. 79.26. Authority to impound vehicles; notice of impoundment.**

(A) Members of the police department are authorized to remove a vehicle from a street or highway to the nearest garage or other place of safety, or to a garage designated and maintained by the police department, or otherwise maintained by the city, under the circumstances hereinafter enumerated:

- (1) When any vehicle is left unattended upon any bridge, viaduct, or causeway or in any tube or tunnel where the vehicle constitutes an obstruction to traffic.
- (2) When a vehicle upon a highway is so disabled as to constitute an obstruction to traffic and the person in charge of the vehicle is by reason of physical injury incapacitated to such an extent as to be unable to provide for its custody or removal.
- (3) When any vehicle is left unattended upon a street, and is so parked illegally as to constitute a definite hazard or obstruction to the normal movement of traffic.

(B) Whenever an officer removes a vehicle from a street as authorized in this section and the officer knows or is able to ascertain from the registration records in the vehicle the name and address of the owner thereof, the officer shall immediately give or cause to be given notice in writing to the owner of the fact of the removal and the reason therefor and of the place to which the vehicle has been removed. In the event any such vehicle is stored in a public garage, a copy of the notice shall be given the proprietor of the garage.

(C) Whenever an officer removes a vehicle from a street under this section and does not know and is not able to ascertain the name of the owner, or for any other reasons is unable to give notice to the owner as hereinbefore provided, and in the event the vehicle is not returned to the owner within a period of three days, then, and in that event, the officer shall immediately send or cause to be sent a written report of the removal by mail to the state department whose duty it is to register motor vehicles and shall file a copy of the notice with the proprietor of any public garage in which the vehicle may be stored. The notice shall include a complete description of the vehicle, the date, time, and place from which removed, the reason for the removal, and the name of the garage where the vehicle is stored.

(Code 1968, § 71.56)

**Sec. 79.27. Inspection fee.**

(A) The city police department shall henceforth charge a fee for the performance of inspections under IC 9-1-2-1(h).

(B) Said fee shall be in the amount of \$5.00.

(C) The revenue from the inspection fee shall be deposited in a special vehicle inspection fund.

(D) The common council may appropriate the money collected from the inspections only for law enforcement purposes.

(Ord. No. 36-88, 8-1-88)



**SCHEDULE IV: NO PARKING ZONES AND PARKING METER  
LOCATIONS (§§ 77.25 and 77.34)**

**PART I. NO PARKING ZONES**

The following street, or parts of streets, are designated as no parking zones:

| <i>Street</i> | <i>Between</i>  | <i>Side</i> | <i>Ord. No.</i> |
|---------------|---|-------------|-----------------|
| Abbott        | New York west to dead end   | Both        | 40-91           |
| Adams         | Madison and Elm   | South       | 774-81          |
| Adams         | Kilgore and Madison   | North       |                 |
| Adams         | Kilgore and Mulberry  | South       | 1678            |
| Adams         | Madison and Monroe  | North       |                 |
| Adams         | McKinley and Calvert  | South       | 644-80          |
| Adams         | Martin and Dill   | South       | 29-95           |
| Adams         | Ohio and Linkon   | South       |                 |
| Adams         | High and Kilgore  | Both        |                 |
| Adams         | Ohio and Dudley   | South       |                 |
| Alameda       | Riverside and Queen   | West        |                 |
| Ashland       | Martin and east to alley  | South       | 7-66            |
| Ashland       | West curb line of Dicks west and east<br>curb line of McKinley      | Both        |                 |
| Ball          | Jackson and R.R. (Bridge)   | West        | 542-79          |
| Beacon        | Seymour and Willard   | West        |                 |
| Beckett       | Tillotson and Maddox  | North       | 44-12           |
| Beechwood     | Light St. and Martin St.  | Both        | 62-97           |
| Berkley       | Jefferson and Madison   | South       |                 |
| Bethel        | West curb line of New York west and<br>the corporate limits         | Both        |                 |
| Bethel        | West curb line of Centennial Ave. and<br>east curb line of New York | Both        |                 |
| Birch         | Memorial and 150 ft. south  | East        |                 |
| Birch         | 8th and 9th   | West        |                 |
| Blaine        | Kirby and 1st   | East        |                 |
| Blaine        | Ohio and Seymour  | Both        |                 |
| Blaine        | 8th and Memorial  |             |                 |
| Bowman        | New York and Rosewood   | Both        | 35-05           |

| <i>Street</i> | <i>Between</i>  | <i>Side</i> | <i>Ord. No.</i> |
|---------------|---|-------------|-----------------|
| Brady         | Centennial and Harkin   | West        |                 |
| Briar         | Riverside and Wiltshire   | East        |                 |
| Briar         | Riverside, North To dead end  | Both        | 8-02            |
| Brook         | Duane, and East To Dead End   | Both        | 11-02           |
| Bryden        | Christy Lane and Oakwood Ave.                                       | Both        | 27-88           |
| Buckles       | Dunn and McGilliard   | East        |                 |
| Burgewood     | Burnelle West and Burnelle East                                     | Both        | 75-93           |
| Calvert       | Jackson and White River   | Both        | 635-80          |
| Calvert       | Riverside and University  | West        | 596-80          |
| Calvert       | Jackson and White River Blvd.                                       | East        | 665-80          |
| Cardinal      | New York and west to dead end                                       | Both        | 39-91           |
| Celia         | Jackson and Adams   | West        | 906-82          |
| Celia         | Jackson and alley north of Jackson                                  | West        |                 |
| Celia         | First alley south of Jackson and Adams                              | East        | 906-82          |
| Centennial    | Walnut and Gavin  | Both        |                 |
| Centennial    | Wheeling and Walnut   | South       |                 |
| Centennial    | Wheeling and west end of fairground fence                           | South       |                 |
| Centennial    | West curb line of Wheeling Avenue west and east curb line of Bethel | Both        |                 |
| Central       | Manor and Highland  | Me-dian     |                 |
| Charles       | Elm and Monroe  | North       |                 |
| Charles       | Hackleyn and Grant  | North       |                 |
| Charles       | Hutchinson and Brittain   | South       | 105-83          |
| Charles       | Kilgore and Mulberry  | North       |                 |
| Charles       | Vine and Pershing   | North       |                 |
| Cherry        | Charles and Washington  | West        |                 |
| Cherry        | Main and Jackson  | West        | 10-83           |
| Cherry        | Main and Washington   | East        | 22-95           |
| Cole          | Gilbert and Main  | Both        | 48-83           |
| Cole          | Gilbert and University  | West        |                 |
| College       | Jackson and White River   | East        | 900-82          |

TRAFFIC SCHEDULES

Sched. IV

| <i>Street</i> | <i>Between</i>                    | <i>Side</i> | <i>Ord. No.</i> |
|---------------|-----------------------------------|-------------|-----------------|
| Columbus      | Walnut Street east to First Alley | South       | 38-91           |



**SCHEDULE XVII: SPEED LIMIT ZONES (§ 72.16).**

The following are designated as speed limit zones:

| <i>Street A</i>               | <i>Between</i>                                    | <i>Speed Limit</i> | <i>Times</i>          | <i>Ord. No.</i> |
|-------------------------------|---|--------------------|-----------------------|-----------------|
| Barr St.                      | McGalliard Rd. to Colbert Dr.                     | 25                 | All                   | 16-05           |
| Beckett                       | Tillotson and Maddox                              | 20                 | All                   | 43-12           |
| Bethel Ave.                   | McGalliard Rd. and Everett Rd.                    | 40                 |                       |                 |
| Broadway                      | Wysor St. and Dartmouth Ave.                      | 40                 | All                   | 126-75          |
| Clarksdale                    | Riverside to dead end                             | 15                 | When children present | 635-80          |
| Colbert Dr.                   | Dunn Ave. to Linda Ln.                            | 25                 | All                   | 16-05           |
| Dunn Ave.                     | Linda Ln. to Colbert Dr.                          | 25                 | All                   | 16-05           |
| Elm                           | Willard and 18 <sup>th</sup> St.                  | 20                 | All                   | 43-12           |
| Haines Dr.                    | West of Linda Ln. 320 ft.                         | 25                 | All                   | 16-05           |
| McCulloch Boulevard           | Broadway Ave. and Elm St.                         | 20                 | All                   | 32-05           |
| McGalliard Rd.                | Tillotson Ave. and Granville Ave.                 | 40                 |                       |                 |
| McGalliard Rd.                | Tillotson Ave. and a point 1,000 ft. east thereof | 20                 |                       |                 |
| Madison St.                   | Walnut St. and 28th St.                           | 45                 | All                   | 126-75          |
| W. Main                       | Kilgore and Jackson                               | 20                 | All                   | 4-13            |
| Martin Luther King, Jr. Blvd. | Tillotson Ave. and Cornbread Rd.                  | 40                 | All                   | 18-86           |
| Pine St.                      | Linda Ln. to Westwood Rd.                         | 25                 | All                   | 16-05           |
| River Rd.                     | Tillotson Ave. and Hawthorne Dr.                  | 40                 | All                   | 51-94           |
| Rochester Ave.                | Memorial Dr. and 15th St.                         | 20                 | All                   | 233-76          |
| Varsity Avenue                | Godman and Oaklyn                                 | 20                 | All                   | 11-03           |
| Westwood Rd.                  | Dunn Ave. to Colbert Dr.                          | 25                 | All                   | 16-05           |
| Wheeling                      | McGalliard and Riggin                             | 40                 | All                   | 58-86           |
| 15th St.                      | Rochester Ave. west to dead end                   | 20                 | All                   | 223-76          |
| 17th St.                      | Hoyt and Gharkey                                  | 20                 | All                   | 644-80          |

| <i>Street A</i> | <i>Between</i>   | <i>Speed Limit</i> | <i>Times</i> | <i>Ord. No.</i> |
|-----------------|--|--------------------|--------------|-----------------|
| SR 32           | 1,000 feet east of the centerline of County Club Rd. to a point 200 feet east of the centerline of Grande Ave. (appx. 3919 feet) | 50                 | All          | DOT #3094084    |
|                 | 200 feet east of the centerline of Grande Ave. to a point 50 feet west of Manhattan Ave. (appx. 3816 feet)                       | 45                 | All          | DOT #3094084    |

(Ord. No. 51-94, § 1, 10-3-94; Ord. No. 32-05, 6-6-05; Ord. No. 4-13, § 1, 3-4-13)

(C) Any person who desires to operate a temporary food-service establishment in the city shall, after securing a permit from the health officer, obtain from the city a license for a temporary food-service establishment. Such license shall be provided by the city controller if there is presented at his office a valid permit from the health officer, together with \$5.00, for each day of operation, not to exceed \$16.00, for any one continuous operation.

(D) A separate license shall be required for each food-service establishment, mobile food-service establishment, or temporary food-service establishment operated or to be operated by any person. A license issued under this chapter is not transferable.

(E) No license shall be required and no license fee shall be paid for food-service establishments, mobile food-service establishments, or temporary food-service establishments operated by religious, educational, or charitable organizations. Such establishments shall comply with the other provisions of § 113.02 of this chapter.

(Code 1968, § 113.03)

**Cross reference**—Penalty, see § 113.99.

**Sec. 113.04. Minimum requirements for food-service establishments.**

(A) All food-service establishment, mobile food-service establishments, and temporary food service establishments shall comply with the minimum requirements specified by the Indiana State board of health as now provided in its Regulation HFD 17 or as the same may be hereafter changed or amended. Such regulation and any changes and amendments are by reference incorporated and made part thereof, two copies of which are on file in the office of the city clerk for public inspection.

(B) All mobile food-service establishments and temporary food-service establishments using the public right of way shall remain at least 150 feet from the property line of any other food service establishment. This section would apply to anyone required to have and display a food permit. This subsection (B) does not apply during times of festivals, carnivals in the public right-of-way. (Code 1968, § 113.04; Ord. No. 41-14, § 1, 1-5-15)

**Cross reference**—Penalty, see § 113.99.

**Sec. 113.05. Sale, examination, and condemnation of unwholesome, adulterated, or misbranded food.**

(A) No person shall sell through a food-service establishment, mobile food-service establishment, or temporary food-service establishment any food which is unwholesome, adulterated, or misbranded.

(B) Samples of food may be taken and examined by the health officer as often as may be necessary to determine freedom from contamination, adulteration, or misbranding. The health officer may, on written notice to the owner or operator, impound and forbid the sale of any food which is unwholesome, adulterated, or misbranded, or which he has probable cause to believe is unfit for human consumption, unwholesome, adulterated, or misbranded; provided that in the case of misbranding which can be corrected by proper labeling, such food may be released to the operator for correct labeling under the supervision of the health officer. The health officer may also cause to be removed or destroyed any dairy product, meat, meat product, seafood, poultry, poultry product, confectionery, bakery product, vegetable, fruit, or other perishable articles which in his opinion are unsound, or contain any filthy, decomposed, or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe.

(Code 1968, § 113.05)

**Cross reference**—Penalty, see § 113.99.

**Sec. 113.06. Inspection of food-service establishments.**

(A) Frequency of inspection. At least four times a year the health officer shall inspect each food-service establishment and mobile food-service establishment for which a permit is required under the provisions of this chapter.

(B) Procedure when violations noted. If during the inspection of any food-service establishment or mobile food-service establishment the health officer discovers the violation of any of the requirements of § 113.04 of this chapter, he shall issue a written order to the proprietor, or, in his absence,

to the person in charge, listing the violations and fixing a time within which the proprietor of the food-service establishment or mobile food-service establishment shall abate and remedy the violations. A copy of the written order shall be filed with the health department.

(C) Authority to inspect and to copy records. The person operating the food-service establishment or mobile food-service establishment shall, upon the request of the health officer, permit the health officer or his authorized representative access to all parts of the food-service establishment or mobile food-service establishment, and shall permit the health officer or his authorized representative to collect evidence and/or exhibits and to copy any or all records relative to the enforcement of this chapter.

(D) Final inspection; prosecution or hearing for violators. If upon a second and final inspection the health officer finds that such food-service establishment or mobile food-service establishment, person, or employee is still in violation of the same provisions as during the previous inspection, and concerning which a written order was issued, the health officer shall furnish evidence of the violation to the prosecutor having jurisdiction in the county in which the violation occurs, and he shall prosecute all persons violating said provisions of this chapter; or the health officer may promptly issue a written order to the permittee of the food-service establishment to appear at a certain time, no later than ten days from the date of final inspection, and at a place in said county fixed in said order to show cause why the permit issued under the provisions of § 113.02 should not be revoked.

(Code 1968, § 113.06)

**Cross reference**—Penalty, see § 113.99.

**Sec. 113.07. Revocation and suspension of permit.**

(A) If the permittee should fail to show cause, the health officer shall revoke said permit and promptly give written notice of this action to the permittee. The health officer shall maintain a permanent record of his proceedings filed in the office of the health department.

(B) Any permit issued under this chapter may be temporarily suspended by the health officer without notice or hearing for a period of not to exceed 30 days, for any of the following reasons:

- (1) Insanitary or other conditions which in the health officer's opinion endanger public health;
- (2) Interference with the health officer or any of his authorized representatives in the performance of their duties; provided, that upon written application from the permittee, served upon the health officer within 15 days after the suspension, the health officer shall conduct a hearing upon the matter after giving at least five days' written notice of the time, place, and purpose thereof to the suspended permittee; provided, further, that any such suspension shall be issued by the health officer in writing and served upon the permittee by leaving a copy at his usual place of business or by delivery of registered or certified mail to such address.

(C) Any person whose permit has been suspended may at any time make application to the health officer for reinstatement of his permit. (Code 1968, § 113.07)

**Sec. 113.08. Inspection of temporary food-service establishments.**

(A) Frequency of inspection. At least once in each 24-hour period the health officer shall inspect each temporary food-service establishment for which a permit is required under the provisions of this chapter.

(B) Procedure to follow when any violation noted. If during the inspection of any temporary food-service establishment the health officer discovers the violation of any of the requirements of § 113.04, he shall order the immediate correction of the violation.

(C) Authority to inspect and to copy records. The person operating the temporary food-service establishment shall, upon the request of the health officer, permit such health officer or his authorized representative access to all parts of the temporary food-service establishment and shall

permit collecting evidence and/or exhibits and copying any or all records relative to be enforcement of this chapter.

(D) Revocation of permit and penalties for continued operation. Upon failure of any person maintaining or operating a temporary food-service establishment to comply with any order of the health officer, it shall be the duty of the health officer summarily to revoke the permit of such person and establishment and to forbid the further sale or serving of food therein. Any person continuing to sell or serve food in such temporary food-service establishment after the permit has been revoked shall be subject to the penalties provided in § 113.99.

(Code 1968, § 113.08)

**Sec. 113.09. Approval of plans.**

All food-service establishments and mobile food-service establishments which are hereafter constructed or altered shall conform with the applicable requirements of § 113.04. Properly prepared plans and specifications shall be submitted to and approved by the health officer as may be required before starting any construction work.

(Code 1968, § 113.09)

**Sec. 113.99. Penalty.**

Any person who violates any of the provisions of this chapter shall on conviction, be punished for the first offense by a fine of not more than \$1,000.00, and for the second and each subsequent offense by a fine of not more than \$1,000.00. Each day of operation of a food-service establishment, mobile food-service establishment, or temporary food-service establishment in violation of §§ 113.02 or 113.03 of this chapter or after the expiration of the time limit for abating insanitary conditions and completing improvements to abate such conditions as ordered by the health officer shall constitute a distinct and separate offense.

(Code 1968, § 113.99)



**CHAPTER 154. PLUMBING CODE\***

- Sec. 154.01. Definitions.
- Sec. 154.02. Reserved.
- Sec. 154.03. Permit required; submission of plans and specifications.
- Sec. 154.04. Compliance with regulations prerequisite to issuance of permit.
- Sec. 154.05. Effect of approval of plans and specifications.
- Sec. 154.06. Repairs.
- Sec. 154.07. Permit fees.
- Sec. 154.08. Revocation of permits; authority of building commissioner.
- Sec. 154.09. Notice of revocation.
- Sec. 154.10. Expiration of permits.
- Sec. 154.11. Inspection of plumbing; duty of building commissioner.
- Sec. 154.12. Reserved.
- Sec. 154.13. Adoption of rules and regulations.
- Sec. 154.14. Registration required.
- Sec. 154.15. List of licensed employees and registered apprentices required.
- Sec. 154.16. Registration fee; expiration of registration; renewal; renewal fee.
- Sec. 154.17. Evidence required for registration.
- Sec. 154.18. Reserved.
- Sec. 154.19. Issuance of license; disposition of fee.
- Sec. 154.20. Reserved.
- Sec. 154.21. Plumbing contractors.
- Secs. 154.22, 154.23. Reserved.
- Sec. 154.24. Violations of regulations.
- Sec. 154.99. Penalty.

**Sec. 154.01. Definitions.**

For purposes of this chapter the following words and phrases shall have the following meanings ascribed to them respectively.

*Fixture.* A water closet, lavatory, bathtub, shower, floor drain, laundry tub, icebox drain, drinking fountain, sink, or similar appliances.

*Plumber.* A person engaged in plumbing.

*Plumbing.* The art and science of installing in buildings the pipes, fixtures, and other apparatus for bringing the water supply and removing liquid and water-carried wastes.

(Code 1968, § 132.300)

**Sec. 154.02. Reserved.**

**Editor's note**—Ord. No. 19-09, § 1, adopted March 2, 2009, repealed former § 154.02 in its entirety which pertained to the board of plumbers' examiners and derived from the Code of 1968.

\***State law reference**—Contractor's regulation and licensing, IC 18-5-21-1.

**Sec. 154.03. Permit required; submission of plans and specifications.**

Before any plumbing work shall be commenced in any residence, building, or structure of any kind or on any lot or premises in the city, plans and specifications thereof shall be filed with the building commissioner, and, if such plans and specifications are approved by the building commissioner, then he shall endorse his approval thereon; or the building commissioner may be notified of the proposed installation of plumbing by the property owner, as above designated, and thereupon the commissioner shall visit the premises and, after inspection of the methods, plans, and specifications of the owner, shall reduce the same to writing and the building commissioner shall endorse his approval thereon. After the approval of such plans and specifications and methods of proposal, a permit to do such plumbing work shall be obtained from the building commissioner of the city.

(Code 1968, § 132.302)

**Sec. 154.04. Compliance with regulations prerequisite to issuance of permit.**

No application for a permit to do plumbing work shall be approved by the building commissioner unless the person making such application agrees to do all the work for which such permit is granted in accordance with the provisions of this chapter and the approval of the building commissioner.

(Code 1968, § 132.303)

**Sec. 154.05. Effect of approval of plans and specifications.**

Approval of all plans and specifications by the building commissioner shall not guarantee any person that the approved plans and specifications are in exact accordance with this chapter, and no errors or omissions found later by the applicant or by the building commissioner shall be construed to permit any person to violate the provisions of this chapter, or other laws. Such errors or omissions shall immediately be rectified, so that such

plans and specifications conform with the provisions of this title, and other ordinances and laws of the city.  
(Code 1968, § 132.304)

**Sec. 154.06. Repairs.**

Repairs shall be taken to mean the repairing or replacing of any old fixture by a new one to be used for the same purpose, forcing out waste, and repairing leaks in pipes; but such repairs or alterations shall not be construed to include cases where new vertical or horizontal lines of soil, waste, vent, or leader pipes are proposed to be used. A building condemned by the board of health because of insanitary conditions shall not be considered as coming under the head of repairs, but any plumbing in such building shall be considered new work. Repairs of plumbing, as above defined and limited, shall not come within the provisions of this chapter.  
(Code 1968, § 132.305)

**Sec. 154.07. Permit fees.**

The permit fees for the installation and inspection or reinspection of plumbing shall be as set out in the building code of the city in §§ 152.01 through 152.144, as adopted and approved by the common council.  
(Code 1968, § 132.306)

**Sec. 154.08. Revocation of permits; authority of building commissioner.**

Should the building commissioner become convinced that the work called for in the plumbing permit is not proceeding according to the plans and specifications upon which the permit was issued, it shall be his duty to notify, in writing, the owner of the property involved, or his agent, and the plumbing contractor installing the work, that the work is being done in violation of the approval, permit, or provisions of this chapter, and that such work shall be corrected to conform to this section; and if such work is not corrected as required, then the permit shall be revoked.  
(Code 1968, § 132.307)

**Sec. 154.09. Notice of revocation.**

The revocation of a plumbing permit shall be by letter to the applicant at the address shown on the plumbing permit application, or to the plumbing concern installing the work; or in lieu thereof, the building commissioner or his authorized assistants may cause a tag, sticker, or notice of such revocation of permit to be attached to the plumbing work under construction or in the vicinity of the work.  
(Code 1968, § 132.308)

**Sec. 154.10. Expiration of permits.**

Every plumbing permit shall expire by limitation if active work has not been commenced within two months of the date of issue.  
(Code 1968, § 132.309)

**Sec. 154.11. Inspection of plumbing; duty of building commissioner.**

The building commissioner, when notified that any plumbing work or other pipe fitting is ready for inspection and test, shall examine the same and approve or reject all such work, or parts thereof, not less than eight working hours from the time of such notification. All work shall be left uncovered for examination until the inspection is made.  
(Code 1968, § 132.310)

**Sec. 154.12. Reserved.**

**Editor's note**—Ord. No. 19-09, § 1, adopted March 2, 2009, repealed former § 154.12 in its entirety which pertained to notice to building commissioner and property owner; reinspection fee and derived from the Code of 1968.

**Sec. 154.13. Adoption of rules and regulations.**

The plumbing rules and regulations of the administrative building council of the state, and revisions thereto, two certified copies of which are on file in the office of the city clerk for public inspection, are accepted and adopted as the minimum requirements for the installation of all plumbing within the city in the type of buildings as set forth under § 154.03.  
(Code 1968, § 132.312)

**Sec. 154.14. Registration required.**

No person shall engage in or operate a business of plumbing in the City of Muncie without first obtaining a registration to do so as hereinafter provided. No registration shall be issued until the applicant has filed with the Muncie Building Commissioner's office a copy of his current state license.

(Code 1968, § 132.313; Ord. No. 44-14, § 1, 1-5-15)

**Sec. 154.15. List of licensed employees and registered apprentices required.**

No registration shall be issued without first submitting a list of all licensed plumbing employees and registered apprentices along with their current license/registration number from IPLA.

(Ord. No. 44-14, § 2, 1-5-15)

**Sec. 154.16. Registration fee; expiration of registration; renewal; renewal fee.**

The fee for a registration to operate a plumbing business or to engage in plumbing as an independent contractor in the city shall be at the rate of \$150.00 per annum payable at the time the application for a registration is filed. All registrations shall expire on January 1st of each year and no registration shall be issued for a longer period than one year. No registration shall be transferable and the registration shall be conspicuously posted in the place of business for which it was issued. The renewal fee, after one year's registration fee of \$150.00 has been paid, shall be \$100.00 per year.

(Code 1968, § 132.315; Ord. No. 19-11, § 1, 8-1-11; Ord. No. 44-14, § 3, 1-5-15)

**Sec. 154.17. Evidence required for registration.**

Any person properly applying to the Muncie Building Commissioner shall produce the required evidence that he/she is actively connected with any firm or corporation engaged in the plumbing business in the city and shall request that such registration be issued in the name of such firm or corporation, provided that all parts of this section have been complied with. Any change in location of business or the addition or with-

drawal of state licensed employees or members of the firm must be reported immediately to the Muncie Building Commissioner's office.

(Code 1968, § 132.316; Ord. No. 44-14, § 4, 1-5-15)

**Sec. 154.18. Reserved.**

**Editor's note**—Ord. No. 19-09, § 1, adopted March 2, 2009, repealed former § 154.18 in its entirety which pertained to examination of applicant for plumber's license and derived from the Code of 1968.

**Sec. 154.19. Issuance of license; disposition of fee.**

The registration provided for in 154.14 shall be issued by the building commissioner to any person qualified in accordance with this chapter, and the registration fee shall be deposited in the general fund.

(Code 1968, § 132.318; Ord. No. 44-14, § 5, 1-5-15)

**Sec. 154.20. Reserved.**

**Editor's note**—Ord. No. 19-09, § 1, adopted March 2, 2009, repealed former § 154.20 in its entirety which pertained to failure to pass examination; fee and reexamination and derived from the Code of 1968.

**Sec. 154.21. Plumbing contractors.**

No firm or corporation shall engage in or operate a plumbing business in the city unless one member of such firm or officer or agent of such corporation has been registered according to the provisions of this chapter and has had the registration issued in the name of the firm or corporation. A person requesting a registration to be issued in the name of a firm or corporation shall file with the building commissioner the names of all members of the firm and the name of the corporation. The registration and all provisions of this section relating thereto shall be binding on all members of the firm or corporation.

(Code 1968, § 132.320; Ord. No. 44-14, § 6, 1-5-15)

**Secs. 154.22, 154.23. Reserved.**

**Editor's note**—Ord. No. 19-09, § 1, adopted March 2, 2009, repealed former §§ 154.22, 154.23 in their entirety which derived from the Code of 1968. Former § 154.22 pertained to the examination of journeyman plumbers. Former § 154.23 pertained to reexamination upon failure to pass exam.

**Sec. 154.24. Violations of regulations.**

No person shall follow the occupation of plumber, either as a master plumber or journeyman plumber within the city, or do any plumbing work for hire within the city, without first having complied with the provisions of this chapter. Any person who shall violate any of the provisions of this chapter, or who shall fail to comply with any of the requirements thereof, or shall assist in any violation, shall be guilty of a misdemeanor.

(Code 1968, § 132.323)

**Sec. 154.99. Penalty.**

Any person convicted a second time of violation of any of the provisions of this chapter, or of failing to comply with any of the requirements thereof, shall be deemed guilty of a misdemeanor, and his plumber's registration shall be revoked for a period of from six months to one year, the time being at the discretion of the court.

(Code 1968, § 132.323; Ord. No. 44-14, § 7, 1-5-15)

**CHAPTER 159. FLOODPLAIN  
MANAGEMENT\***

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Division 1. In General

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\***Editor's note**—Ord. No. 8-11, §§ 1, 2, adopted June 29, 2011, repealed former Ch. 159, §§ 15.01—15.14, and enacted new provisions as herein set out. Former Ch. 159 pertained to similar subject matter and derived from Ord. No. 60-94, § 1, adopted Nov. 14, 1994.

**Sec. 159.01. Statutory authorization.**

The Indiana Legislature has in IC 36-7-4 and IC 14-28-4 granted the power to local government units to control land use within their jurisdictions. Therefore, the common council of the City of Muncie, Indiana does hereby adopt the following floodplain management regulations which shall be known as the Floodplain Management Ordinance for the City of Muncie, Indiana. (Ord. No. 8-11, § 2(Art. 1, § A), 6-29-11)

**Sec. 159.02. Findings of fact.**

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

(B) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damages. (Ord. No. 8-11, § 2(Art. 1, § B), 6-29-11)

**Sec. 159.03. Statement of purpose.**

It is the purpose of this chapter to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, which result in damaging increases in erosion or in flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;
- (4) Control filling, grading, dredging, and other development which may increase erosion or flood damage;
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands; and
- (6) Make federally subsidized flood insurance available for structures and their contents in the City by fulfilling the requirements of the National Flood Insurance Program.

(Ord. No. 8-11, § 2(Art. 1, § C), 6-29-11)

**Sec. 159.04. Objectives.**

The objectives of this chapter are:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money for costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruptions;
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges located in floodplains;
- (6) To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas; and
- (7) To ensure that potential homebuyers are notified that property is in a flood area.

(Ord. No. 8-11, § 2(Art. 1, § D), 6-29-11)

**Sec. 159.05. Definitions.**

Unless specifically defined below, words or phrases used in this chapter shall be interpreted

so as to give them the meaning they have in common usage and to give this chapter it's most reasonable application.

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

- (1) *Zone A:* Areas subject to inundation by the one-percent annual chance flood event. Because detailed hydraulic analyses have not been performed, no base flood elevation or depths are shown. Mandatory flood insurance purchase requirements apply.
- (2) *Zone AE and A1—A30:* Areas subject to inundation by the one-percent annual chance flood event determined by detailed methods. Base flood elevations are shown within these zones. Mandatory flood insurance purchase requirements apply. (Zone AE is on new and revised maps in place of Zones A1—A30.)
- (3) *Zone AO:* Areas subject to inundation by one-percent annual chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone. Mandatory flood insurance purchase requirements apply.
- (4) *Zone AH:* Areas subject to inundation by one-percent annual chance shallow flooding (usually areas of ponding) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone. Mandatory flood insurance purchase requirements apply.
- (5) *Zone AR:* Areas that result from the decertification of a previously accredited flood protection system that is determined to be

in the process of being restored to provide base flood protection. Mandatory flood insurance purchase requirements apply.

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

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

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

*Appeal* means a request for a review of the floodplain administrator's interpretation of any provision of this ordinance or a request for a variance.

*Area of shallow flooding* means a designated AO or AH Zone on the community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding

is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

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

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

*Building*: See "structure."

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

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

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

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

- (1) Construction, reconstruction, or placement of a structure or any addition to a structure;
- (2) Installing a manufactured home on a site, preparing a site for a manufactured home or installing a recreational vehicle on a site for more than 180 days;
- (3) Installing utilities, erection of walls and fences, construction of roads, or similar projects;
- (4) Construction of flood control structures such as levees, dikes, dams, channel improvements, etc.;
- (5) Mining, dredging, filling, grading, excavation, or drilling operations;

- (6) Construction and/or reconstruction of bridges or culverts;
- (7) Storage of materials; or
- (8) Any other activity that might change the direction, height, or velocity of flood or surface waters.

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

*Elevated structure* means a non-basement structure built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, filled stem wall foundations (also called chain walls), pilings, or columns (posts and piers).

*Elevation certificate* is a certified statement that verifies a structure's elevation information.

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

*Encroachment* means the advance or infringement of uses, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

*Existing construction* means any structure for which the "start of construction" commenced before the effective date of the community's first floodplain ordinance.

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

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

*FEMA* means the Federal Emergency Management Agency.

*Five-hundred year flood (500-year flood)* means the flood that has a 0.2 percent chance of being equaled or exceeded in any year.

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

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

*Flood hazard boundary map (FHBM)* means an official map of a community, issued by FEMA, where the boundaries of the areas of special flood hazard have been identified as Zone A.

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

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

*Floodprone area* means any land area acknowledged by a community as being susceptible to inundation by water from any source. (See "flood").

*Flood protection grade (FPG)* is the elevation of the regulatory flood plus two feet at any given location in the SFHA. (see "freeboard")

*Floodplain* means the channel proper and the areas adjoining any wetland, lake, or watercourse

which have been or hereafter may be covered by the regulatory flood. The floodplain includes both the floodway and the fringe districts.

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

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

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

*Floodproofing certificate* is a form used to certify compliance for non-residential structures as an alternative to elevating structures to or above the FPG. This certification must be by a registered professional engineer or architect.

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

*Freeboard* means a factor of safety, usually expressed in feet above the BFE, which is applied for the purposes of floodplain management. It is

used to compensate for the many unknown factors that could contribute to flood heights greater than those calculated for the base flood.

*Fringe* is those portions of the floodplain lying outside the floodway.

*Functionally dependent facility* means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, ship repair, or seafood processing facilities. The term does not include long-term storage, manufacture, sales, or service facilities.

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

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

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

*Increased cost of compliance (ICC)* means the cost to repair a substantially damaged structure that exceeds the minimal repair cost and that is required to bring a substantially damaged structure into compliance with the local flood damage prevention ordinance. Acceptable mitigation measures are elevation, relocation, demolition, or any combination thereof. All renewal and new busi-

ness flood insurance policies with effective dates on or after June 1, 1997, will include ICC coverage.

*Letter of map amendment (LOMA)* means an amendment to the currently effective FEMA map that establishes that a property is not located in a SFHA. A LOMA is only issued by FEMA.

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

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

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

*Lowest floor* means the lowest of the following:

- (1) The top of the lowest level of the structure;
- (2) The top of the basement floor;
- (3) The top of the garage floor, if the garage is the lowest level of the structure;
- (4) The top of the first floor of a structure elevated on pilings or pillars;
- (5) The top of the floor level of any enclosure, other than a basement, below an elevated structure where the walls of the enclosure provide any resistance to the flow of flood waters unless:
  - (a) The walls are designed to automatically equalize the hydrostatic flood forces on the walls by allowing for the entry and exit of flood waters by providing a minimum of two openings (in addition to doorways and windows) in a minimum of two exterior walls having a total net area of one square inch for every one square foot of enclosed area. The bottom of all such openings shall be no higher

than one (1) foot above the exterior grade or the interior grade immediately beneath each opening, whichever is higher and shall be located entirely below the BFE; and,

- (b) Such enclosed space shall be usable solely for the parking of vehicles and building access.

*Manufactured home* means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

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

*Map amendment* means a change to an effective NFIP map that results in the exclusion from the SFHA of an individual structure or a legally described parcel of land that has been inadvertently included in the SFHA (i.e., no alterations of topography have occurred since the date of the first NFIP map that showed the structure or parcel to be within the SFHA).

*Map panel number* is the four-digit number followed by a letter suffix assigned by FEMA on a flood map. The first four digits represent the map panel, and the letter suffix represents the number of times the map panel has been revised. (The letter "A" is not used by FEMA, the letter "B" is the first revision.)

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

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

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

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

*New construction* means any structure for which the "start of construction" commenced after the effective date of the community's first floodplain ordinance.

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

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

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

*One-hundred year flood (100-year flood)* is the flood that has a one-percent chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A is subject to the one-percent annual chance flood. See "regulatory flood".

*One-percent annual chance flood* is the flood that has a one-percent chance of being equaled or

exceeded in any given year. Any flood zone that begins with the letter A is subject to the one-percent annual chance flood. See "regulatory flood."

*Participating community* is any community that voluntarily elects to participate in the NFIP by adopting and enforcing floodplain management regulations that are consistent with the standards of the NFIP.

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

*Post-FIRM construction* means construction or substantial improvement that started on or after the effective date of the initial FIRM of the community or after December 31, 1974, whichever is later.

*Pre-FIRM construction* means construction or substantial improvement, which started on or before December 31, 1974, or before the effective date of the initial FIRM of the community, whichever is later.

*Probation* is a means of formally notifying participating communities of violations and deficiencies in the administration and enforcement of the local floodplain management regulations.

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

*Recreational vehicle* means a vehicle which is:

- (1) Built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projections;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and

- (4) Designed primarily not for use as a permanent dwelling, but as quarters for recreational camping, travel, or seasonal use.

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

*Regulatory flood* means the flood having a one-percent chance of being equaled or exceeded in any given year, as calculated by a method and procedure that is acceptable to and approved by the Indiana Department of Natural Resources and the Federal Emergency Management Agency. The regulatory flood elevation at any location is as defined in section 159.07. The "regulatory flood" is also known by the term "base flood," "one-percent annual chance flood," and "100-year flood."

*Repetitive loss* means flood-related damages sustained by a structure on two separate occasions during a ten-year period ending on the date of the event for which the second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded 25 percent of the market value of the structure at the time of each such flood event.

Section 1316 is that section of the National Flood Insurance Act of 1968, as amended, which states that no new flood insurance coverage shall be provided for any property that the administrator finds has been declared by a duly constituted state or local zoning authority or other authorized public body to be in violation of state or local laws, regulations, or ordinances that intended to discourage or otherwise restrict land development or occupancy in floodprone areas.

*Special flood hazard area (SFHA)* means those lands within the jurisdiction of the City of Muncie subject to inundation by the regulatory flood. The SFHAs of the city are generally identified as such on the Delaware County and incorporated areas flood insurance rate map prepared by the Federal Emergency Management Agency, dated July 4, 2011. (These areas are shown on a FHBM or FIRM as Zone A, AE, A1—A30, AH, AR, A99, or

AO). The SFHAs of those parts of unincorporated Delaware County that are within the extraterritorial jurisdiction of the city or that may be annexed into the city are generally identified as such on the Delaware County and incorporated areas flood insurance rate map prepared by the Federal Emergency Management Agency and dated July 4, 2011. (These areas are shown on a FHBM or FIRM as Zone A, AE, A1—A30, AH, AR, A99, or AO).

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

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

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

*Substantial improvement* means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the

structure before the "start of construction" of the improvement. This term includes structures that have incurred "repetitive loss" or "substantial damage" regardless of the actual repair work performed. The term does not include improvements of structures to correct existing violations of state or local health, sanitary, or safety code requirements or any alteration of a "historic structure," provided that the alteration will not preclude the structures continued designation as a "historic structure".

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

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

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

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

*Water surface elevation* means the height, in relation to the North American Vertical Datum of 1988 (NAVD 88) or National Geodetic Vertical Datum of 1929 (NGVD) (other datum where specified) of floods of various magnitudes and frequencies in the floodplains of riverine areas.

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

(C zones on older FIRMs) designate areas where the annual exceedance probability of flooding is less than 0.2 percent.

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

*Zone A.* (See definition for A zone).

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

(Ord. No. 8-11, § 2(Art. 2), 6-29-11)

#### **Sec. 159.06. Lands to which this chapter applies.**

This chapter shall apply to all SFHAs and known flood prone areas within the corporate limits of the City of Muncie, Indiana.

(Ord. No. 8-11, § 2(Art. 3, § A), 6-29-11)

#### **Sec. 159.07. Basis for establishing regulatory flood data.**

This chapter's protection standard is the regulatory flood. The best available regulatory flood data is listed below. Whenever a party disagrees with the best available data, the party submitting the detailed engineering study needs to replace existing data with better data and submit it to the Indiana Department of Natural Resources for review and approval.

- (1) The regulatory flood elevation, floodway, and fringe limits for the studied SFHAs of the City of Muncie shall be as delineated on the one-percent annual chance flood profiles in the Flood Insurance Study of Delaware County and Incorporated Areas dated July 4, 2011 and the corresponding Flood Insurance Rate Map prepared by the Federal Emergency Management Agency and dated July 4, 2011.

- (2) The regulatory flood elevation, floodway, and fringe limits for each of the remaining SFHAs delineated as an "A Zone" on the Delaware County and Incorporated Areas Flood Insurance Rate Map prepared by the Federal Emergency Management Agency and dated July 4, 2011 shall be according to the best data available as provided by the Indiana Department of Natural Resources; provided the upstream drainage area from the subject site is greater than one square mile.
- (3) In the absence of a published FEMA map, or absence of identification on a FEMA map, the regulatory flood elevation, floodway, and fringe limits of any watercourse in the community's known floodprone areas shall be according to the best data available as provided by the Indiana Department of Natural Resources; provided the upstream drainage area from the subject site is greater than one square mile.

(Ord. No. 8-11, § 2(Art. 3, § B), 6-29-11)

**Sec. 159.08. Establishment of floodplain development permit.**

A floodplain development permit shall be required in conformance with the provisions of this chapter prior to the commencement of any development activities in areas of special flood hazard. (Ord. No. 8-11, § 2(Art. 3, § C), 6-29-11)

**Sec. 159.09. Compliance.**

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

(Ord. No. 8-11, § 2(Art. 3, § D), 6-29-11)

**Sec. 159.10. Abrogation and greater restrictions.**

This chapter is not intended to repeal, abrogate, or impair any existing easements, cove-

nants, or deed restrictions. However, where this chapter and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Ord. No. 8-11, § 2(Art. 3, § E), 6-29-11)

**Sec. 159.11. Discrepancy between mapped floodplain and actual ground elevations.**

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

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

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

(Ord. No. 8-11, § 2(Art. 3, § F), 6-29-11)

**Sec. 159.12. Interpretation.**

In the interpretation and application of this chapter all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. No. 8-11, § 2(Art. 3, § G), 6-29-11)

**Sec. 159.13. Warning and disclaimer of liability.**

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on available information derived from engineering and scientific methods of study. Larger floods can and will occur on rare occasions. Therefore, this ordinance does not create any liability on the part of the city, the Indiana Department of Natural Resources, or the

State of Indiana, for any flood damage that results from reliance on this chapter or any administrative decision made lawfully thereunder. (Ord. No. 8-11, § 2(Art. 3, § H), 6-29-11)

**Sec. 159.14. Penalties for violation.**

Failure to obtain a floodplain development permit in the SFHA or failure to comply with the requirements of a floodplain development permit or conditions of a variance shall be deemed to be a violation of this chapter. All violations shall be considered a common nuisance and be treated as any other violation of the City of Muncie Comprehensive Zoning Ordinance and/or the Muncie City Code. All violations shall be punishable by a fine not exceeding \$2,500.00.

- (1) A separate offense shall be deemed to occur for each day the violation continues to exist.
- (2) The city shall inform the owner that any such violation is considered a willful act to increase flood damages and therefore may cause coverage by a standard flood insurance policy to be suspended.
- (3) Nothing herein shall prevent the city from taking such other lawful action to prevent or remedy any violations. All costs connected therewith shall accrue to the person or persons responsible.

(Ord. No. 8-11, § 2(Art. 3, § I), 6-29-11)

**Sec. 159.15. Increased cost of compliance (ICC).**

In order for buildings to qualify for a claim payment under ICC coverage as a "repetitive loss structure", the National Reform Act of 1994 requires that the building be covered by a contract for flood insurance and incur flood-related damages on two occasions during a 10-year period ending on the date of the event for which the second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded 25 percent of the market value of the building at the time of each such flood event. (Ord. No. 8-11, § 2(Art. 3, § J), 6-29-11)

**Sec. 159.16. Severability.**

If any section, clause, sentence, or phrase of the chapter is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this chapter. (Ord. No. 8-11, § 2(Art. 7, 6-29-11))

DIVISION 2. ADMINISTRATION

**Sec. 159.17. Designation of administrator.**

The zoning administrator for the City of Muncie shall administer and implement the provisions of this chapter and is herein referred to as the floodplain administrator.

(Ord. No. 8-11, § 2(Art. 4, § A), 6-29-11)

**Sec. 159.18. Permit procedures.**

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

- (1) *Application stage.*
  - (a) A description of the proposed development;
  - (b) Location of the proposed development sufficient to accurately locate property and structure in relation to existing roads and streams;
  - (c) A legal description of the property site;
  - (d) A site development plan showing existing and proposed development locations and existing and proposed land grades;
  - (e) Elevation of the top of the lowest floor (including basement) of all proposed buildings. Elevation should be in NAVD 88 or NGVD;

- (f) Elevation (in NAVD 88 or NGVD) to which any non-residential structure will be floodproofed;
- (g) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development; and
- (h) Copies of local, state and federal permits and/or approvals, as applicable. If the development calls for any alteration or relocation of a watercourse, verification must be submitted showing that notice was given to adjacent municipal corporations, the state floodplain coordinator, and FEMA.

(2) *Construction stage.* Upon placement of the lowest floor; or floodproofing, it shall be the duty of the permit holder to submit to the floodplain administrator a certification of the NAVD 88 or NGVD elevation of the lowest floor or floodproofed elevation, as built. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by the same. When floodproofing is utilized for a particular structure said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work undertaken prior to submission of the certification shall be at the permit holders' risk. The floodplain administrator shall review the lowest floor and floodproofing elevation survey data submitted. The permit holder shall correct deficiencies detected by such review before any further work is allowed to proceed. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project.

(Ord. No. 8-11, § 2(Art. 4, § B), 6-29-11)

**Sec. 159.19. Duties and responsibilities of the floodplain administrator.**

(A) The floodplain administrator and/or designated staff is hereby authorized and directed to enforce the provisions of this chapter. The admin-

istrator is further authorized to render interpretations of this chapter, which are consistent with its spirit and purpose.

(B) Duties and responsibilities of the floodplain administrator shall include, but not be limited to:

- (1) Review all floodplain development permits to assure that the permit requirements of this ordinance have been satisfied;
- (2) Inspect and inventory damaged structures in the SFHA and complete substantial damage determinations;
- (3) Ensure that construction authorization has been granted by the Indiana Department of Natural Resources for all development projects subject to section 159.24 and subsection 159.26(A), and maintain a record of such authorization (either copy of actual permit or floodplain analysis/regulatory assessment.)
- (4) Ensure that all necessary federal or state permits have been received prior to issuance of the local floodplain development permit. Copies of such permits are to be maintained on file with the floodplain development permit;
- (5) Notify adjacent communities and the state floodplain coordinator prior to any alteration or relocation of a watercourse, and submit copies of such notifications to FEMA;
- (6) Maintain for public inspection and furnish upon request local permit documents, damaged structure inventories, substantial damage determinations, regulatory flood data, SFHA maps, letters of map amendment (LOMA), letters of map revision (LOMR), copies of DNR permits and floodplain analysis and regulatory assessments (letters of recommendation), federal permit documents, and "as-built" elevation and floodproofing data for all buildings constructed subject to this chapter.
- (7) Utilize and enforce all letters of map revision (LOMR) or physical map revision

sions (PMR) issued by FEMA for the currently effective SFHA maps of the community.

- (8) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished;
- (9) Verify and record the actual elevation of the lowest floor (including basement) of all new or substantially improved structures, in accordance with section 159.18;
- (10) Verify and record the actual elevation to which any new or substantially improved structures have been floodproofed, in accordance with section 159.18;
- (11) Review certified plans and specifications for compliance;
- (12) Stop work orders:
  - (a) Upon notice from the floodplain administrator, work on any building, structure or premises that is being done contrary to the provisions of this chapter shall immediately cease.
  - (b) Such notice shall be in writing and shall be given to the owner of the property, or to his agent, or to the person doing the work, and shall state the conditions under which work may be resumed.
- (13) Revocation of permits:
  - (a) The floodplain administrator may revoke a permit or approval, issued under the provisions of the ordinance, in cases where there has been any false statement or misrepresentation as to the material fact in the application or plans on which the permit or approval was based.
  - (b) The floodplain administrator may revoke a permit upon determination by the floodplain administrator that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the struc-

ture for which the permit was issued is in violation of, or not in conformity with, the provisions of this chapter.

- (14) Inspect sites for compliance. For all new and/or substantially improved buildings constructed in the SFHA, inspect before, during and after construction. Authorized city officials shall have the right to enter and inspect properties located in the SFHA. (Ord. No. 8-11, § 2(Art. 4, § C), 6-29-11)

### DIVISION 3. PROVISIONS FOR FLOOD HAZARD REDUCTION

#### **Sec. 159.20. General standards.**

In all SFHAs and known flood prone areas the following provisions are required:

- (1) New construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure;
- (2) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces;
- (3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage below the FPG;
- (4) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (5) Electrical, heating, ventilation, plumbing, air conditioning equipment, utility meters, and other service facilities shall be located at/above the FPG or designed so as to prevent water from entering or accumulating within the components below the FPG. Water and sewer pipes, electri-

cal and telephone lines, submersible pumps, and other waterproofed service facilities may be located below the FPG;

- (6) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (7) New on-site sewage systems located in a fringe area and repairs to existing on-site sewage systems shall be located and installed in accordance with state and local health codes and procedures; replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (8) On-site waste disposal and sewage systems shall be located and constructed to avoid impairment to them or contamination from them during flooding and no part of a new on-site sewage system, including the soil absorption area, shall be located in a floodway;
- (9) Any alteration, repair, reconstruction or improvements to a structure that is in compliance with the provisions of this ordinance shall meet the requirements of "new construction" as contained in this chapter; and
- (10) Any alteration, repair, reconstruction or improvement to a structure that is not in compliance with the provisions of this chapter shall be undertaken only if said non-conformity is not further extended or replaced.

(Ord. No. 8-11, § 2(Art. 5, § A), 6-29-11)

**Sec. 159.21. Specific standards.**

In all SFHAs, the following provisions are required:

- (1) In addition to the requirements of section 159.20, all structures to be located in the SFHA shall be protected from flood damage below the FPG. This building protection requirement applies to the following situations:
  - (a) Construction or placement of any new structure having a floor area greater than 400 square feet;

- (b) An addition or improvement made to any existing structure, as follows:
  - (i) Where the cost of the addition or improvement equals or exceeds 50 percent of the value of the existing structure (excluding the value of the land);
  - (ii) With a previous addition or improvement constructed since the community's first floodplain ordinance.
- (c) Reconstruction or repairs made to a damaged structure where the costs of restoring the structure to its before damaged condition equals or exceeds 50 percent of the market value of the structure (excluding the value of the land) before damage occurred;
- (d) Installing a travel trailer or recreational vehicle on a site for more than 180 days.
- (e) Installing a manufactured home on a new site or a newly installed manufactured home on an existing site. This chapter does not apply to returning the existing manufactured home to the same site it lawfully occupied before it was removed to avoid flood damage; and
- (f) Reconstruction or repairs made to a repetitive loss structure;

- (2) *Residential construction.* New construction or substantial improvement of any residential structure (or manufactured home) shall have the lowest floor; including basement, at or above the FPG (two feet above the base flood elevation). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of subsection 159.21(4).
- (3) *Non-residential construction.* New construction or substantial improvement of any commercial, industrial, or non-resi-

dential structure (or manufactured home) shall either have the lowest floor, including basement, elevated to or above the FPG (two feet above the base flood elevation) or be floodproofed to or above the FPG. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of subsection 159.21(4). Structures located in all "A Zones" may be floodproofed in lieu of being elevated if done in accordance with the following:

- (a) A registered professional engineer or architect shall certify that the structure has been designed so that below the FPG, the structure and attendant utility facilities are watertight and capable of resisting the effects of the regulatory flood. The structure design shall take into account flood velocities, duration, rate of rise, hydrostatic pressures, and impacts from debris or ice. Such certification shall be provided to the official as set forth in subsection 159.19(10).
- (b) Floodproofing measures shall be operable without human intervention and without an outside source of electricity.
- (4) *Elevated structures.* New construction or substantial improvements of elevated structures shall have the lowest floor at or above the FPG.

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

- (a) Provide a minimum of two openings located in a minimum of two exterior walls (having a total net area of not

less than one square inch for every one square foot of enclosed area); and

- (b) The bottom of all openings shall be no more than one foot above the exterior grade or the interior grade immediately beneath each opening, whichever is higher; and
- (c) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions; and
- (d) Access to the enclosed area shall be the minimum necessary to allow for parking for vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator); and
- (e) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms; and
- (f) The interior grade of such enclosed area shall be at an elevation at or higher than the exterior grade; and
- (5) *Structures constructed on fill.* A residential or nonresidential structure may be constructed on a permanent land fill in accordance with the following:
  - (a) The fill shall be placed in layers no greater than one foot deep before compacting to 95 percent of the maximum density obtainable with either the Standard or Modified Proctor Test method.
  - (b) The fill should extend at least ten feet beyond the foundation of the structure before sloping below the FPG.
  - (c) The fill shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulkheading. If vegetative cover is used, the slopes shall be no steeper than three horizontal to one vertical.

- (d) The fill shall not adversely affect the flow of surface drainage from or onto neighboring properties.
  - (e) The top of the lowest floor including basements shall be at or above the FPG.
- (6) *Standards for manufactured homes and recreational vehicles.* Manufactured homes and recreational vehicles to be installed or substantially improved on a site for more than 180 days must meet one of the following requirements:
- (a) The manufactured home shall be elevated on a permanent foundation such that the lowest floor shall be at or above the FPG and securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. This requirement applies to all manufactured homes to be placed on a site:
    - (i) Outside a manufactured home park or subdivision;
    - (ii) In a new manufactured home park or subdivision;
    - (iii) In an expansion to an existing manufactured home park or subdivision; or
    - (iv) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood.
  - (b) The manufactured home shall be elevated so that the lowest floor of the manufactured home chassis is supported by reinforced piers or other foundation elevations that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. This requirement applies to all manufactured homes to be placed on a site in an existing manufactured home park or subdivision that has not been substantially damaged by a flood.

- (c) Manufactured homes with fully enclosed areas formed by foundation and other exterior walls below the flood protection grade shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in subsection 159.21(4).
  - (d) Flexible skirting and rigid skirting not attached to the frame or foundation of a manufactured home are not required to have openings.
  - (e) Recreational vehicles placed on a site shall either:
    - (i) Be on site for less than 180 days; and
    - (ii) Be fully licensed and ready for highway use (defined as being on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or
    - (iii) Meet the requirements for "manufactured homes" as stated earlier in this section.
- (Ord. No. 8-11, § 2(Art. 5, § B), 6-29-11)

**Sec. 159.22. Standards for subdivision proposals.**

- (A) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (B) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (C) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (D) Base flood elevation data shall be provided for subdivision proposals and other proposed development (including manufactured home parks and subdivisions) containing land in the SFHA

and/or flood prone areas. Lines depicting the floodway and fringe shall be delineated on the plat and/or site plans.

(E) All subdivisions containing a SFHA shall include statements in the restrictions and owner's certificate dealing with the lowest floor elevation requirement, increased flood risks and flood insurance premiums, and protection of the floodway. The plan commission may require additional information to be included as deemed necessary to meet the requirements of this chapter.

(F) All subdivision proposals shall minimize development in the SFHA and/or limit density of development permitted in the SFHA. The plan commission may require additional engineering studies prior to allowing development in the SFHA. (Ord. No. 8-11, § 2(Art. 5, § C), 6-29-11)

#### **Sec. 159.23. Critical facility.**

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

(Ord. No. 8-11, § 2(Art. 5, § D), 6-29-11)

#### **Sec. 159.24. Standards for identified floodways.**

(A) Located within SFHAs, established in section 159.07, are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles, and has erosion potential. If the site is in an identified floodway, the floodplain administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources and apply for a permit for construction in a floodway. Under the provisions of IC 14-28-1 a permit for construction in a

floodway from the Indiana Department of Natural Resources is required prior to the issuance of a local building permit for any excavation, deposit, construction, or obstruction activity located in the floodway. This includes land preparation activities such as filling, grading, clearing and paving, etc. undertaken before the actual start of construction of the structure. However, it does exclude non-substantial additions/improvements to existing (lawful) residences in a non-boundary river floodway. IC 14-28-1-26 allows construction of non-substantial additions/ improvements to residences in a non-boundary river floodway without obtaining a permit for construction in the floodway from the Indiana Department of Natural Resources. If fill is needed to elevate an addition above the existing grade, prior approval (construction in a floodway permit) for the fill is required from the Indiana Department of Natural Resources.

(B) No action shall be taken by the Floodplain Administrator until a permit (when applicable) has been issued by the Indiana Department of Natural Resources granting approval for construction in the floodway. Once a permit for construction in a floodway has been issued by the Indiana Department of Natural Resources, the floodplain administrator may issue the local floodplain development permit, provided the provisions contained in Division 3 of this chapter have been met. The floodplain development permit cannot be less restrictive than the permit for construction in a floodway issued by the Indiana Department of Natural Resources. However, a community's more restrictive regulations (if any) shall take precedence.

(C) No development shall be allowed which acting alone or in combination with existing or future development, will increase the regulatory flood more than 0.14 of one foot; and

(D) For all projects involving channel modifications or fill (including levees), the City shall submit the data and request that the Federal Emergency Management Agency revise the regulatory flood data.

(Ord. No. 8-11, § 2(Art. 5, § E), 6-29-11)

**Sec. 159.25. Standards for identified fringe.**

If the site is located in an identified fringe, then the floodplain administrator may issue the local floodplain development permit provided the provisions contained in Division 3 of this chapter have been met. The key provision is that the top of the lowest floor of any new or substantially improved structure shall be at or above the FPG. (Ord. No. 8-11, § 2(Art. 5, § F), 6-29-11)

**Sec. 159.26. Standards for SFHAs without established base flood elevation and/or floodways/fringes.**

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

- (1) If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined, and the drainage area upstream of the site is greater than one square mile, the floodplain administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources for review and comment.
- (2) No action shall be taken by the floodplain administrator until either a permit for construction in a floodway or a floodplain analysis/regulatory assessment citing the one-percent annual chance flood elevation and the recommended Flood Protection Grade has been received from the Indiana Department of Natural Resources.
- (3) Once the floodplain administrator has received the proper permit for construction in a floodway or floodplain analysis/regulatory assessment approving the proposed development, a floodplain development permit may be issued provided the conditions of the floodplain development Permit are not less restrictive than the conditions received from the Indiana Department of Natural Resources and the provisions contained in Division 3 of this chapter have been met.

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

- (1) If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined and the drainage area upstream of the site is less than one square mile, the floodplain administrator shall require the applicant to provide an engineering analysis showing the limits of the floodplain and one-percent annual chance flood elevation for the site.
- (2) Upon receipt, the floodplain administrator may issue the local floodplain development permit, provided the provisions contained in Division 3 of this chapter have been met.

(C) The total cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the regulatory flood more than 0.14 of one foot and will not increase flood damages or potential flood damages.

(Ord. No. 8-11, § 2(Art. 5, § G), 6-29-11)

**Sec. 159.27. Standards for floodprone areas.**

All development in known flood prone areas not identified on FEMA maps, or where no FEMA published map is available, shall meet general standards as required per subsections 159.20(1) through 10.

(Ord. No. 8-11, § 2(Art. 5, § H), 6-29-11)

**DIVISION 4. VARIANCES AND APPEALS PROCEDURES**

**Sec. 159.28. Designation of variance and appeals board.**

The Delaware-Muncie Metropolitan Board of Zoning Appeals shall hear and decide appeals and requests for variances from requirements of this chapter in accordance with established schedules and procedures.

(Ord. No. 8-11, § 2(Art. 6, § A), 6-29-11)

**Sec. 159.29. Duties of board of zoning appeals.**

The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the floodplain administrator in the enforcement or administration of this chapter. The board shall hear and decide requests for variances from requirements of this chapter. Any person aggrieved by the decision of the board may appeal such decision in accordance with state law.

(Ord. No. 8-11, § 2(Art. 6, § B), 6-29-11)

**Sec. 159.30. Variance procedures.**

In addition to established procedures, in passing upon a request to vary the requirements of this chapter, the board of zoning appeals shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and

- (1) The danger of life and property due to flooding or erosion damage;
- (2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (3) The importance of the services provided by the proposed facility to the community;
- (4) The necessity to the facility of a waterfront location, where applicable;
- (5) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (6) The compatibility of the proposed use with existing and anticipated development;
- (7) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (8) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (9) The expected height, velocity, duration, rate of rise, and sediment of transport of the floodwaters at the site; and

- (10) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(Ord. No. 8-11, § 2(Art. 6, § C), 6-29-11)

**Sec. 159.31. Conditions for variances.**

(A) Variances shall only be issued when there is:

- (1) A showing of good and sufficient cause;
- (2) A determination that failure to grant the variance would result in exceptional hardship; and
- (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.

(B) No variance for a residential use within a floodway subject to section 159.24, or subsection 159.26(A) may be granted.

(C) Any variance granted in a floodway subject to section 159.24 or subsection 159.26(A) will require a permit from the Indiana Department of Natural Resources.

(D) Variances to the provisions for flood hazard reduction of section 159.21, may be granted only when a new structure is to be located on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection grade.

(E) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(F) Variances may be granted for the reconstruction or restoration of any structure individually listed on the National Register of Historic Places or the Indiana State Register of Historic Sites and Structures.

(G) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the lowest floor is to be built and stating that the cost of the flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation (See section 159.32).

(H) The floodplain administrator shall maintain the records of appeal actions and report any variances to the Federal Emergency Management Agency or the Indiana Department of Natural Resources upon request (See section 159.32).  
(Ord. No. 8-11, § 2(Art. 6, § D), 6-29-11)

**Sec. 159.32. Variance notification.**

(A) Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:

- (1) The issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage; and
- (2) Such construction below the base flood level increases risks to life and property.

(B) The floodplain administrator will maintain a record of all variance actions, including justification for their issuance, and report such variances issued in the community's biennial report submission to the Federal Emergency Management Agency.  
(Ord. No. 8-11, § 2(Art. 6, § E), 6-29-11)

**Sec. 159.33. Historic structure.**

Variances may be issued for the repair or rehabilitation of "historic structures" upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an "historic structure" and the variance is the minimum to preserve the historic character and design of the structure.  
(Ord. No. 8-11, § 2(Art. 6, § F), 6-29-11)

**Sec. 159.34. Special conditions.**

Upon the consideration of the factors listed in Division 4 of this chapter, and the purposes of this chapter, the board of zoning appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.  
(Ord. No. 8-11, § 2(Art. 6, § G), 6-29-11)

## REFERENCES TO INDIANA CODE

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| Trial Rule 6(A)    | 10.12        | 9-4-1-16 | 70.01        |
| 1-1-1-8            | 10.07        | 9-4-1-17 | 70.01        |
| 1-1-3.5            | 10.05        | 9-4-1-18 | 70.01        |
| 1-1-4-1            | 10.06        | 9-4-1-19 | 70.01        |
| 1-1-4-5            | 10.05        | 9-4-1-20 | 70.01        |
| 3-12-5-17          | 30.03        | 9-4-1-21 | 70.01        |
| 3-13-8             | 31.04        | 9-4-1-24 | 70.03        |
| 4-21.5-1 et seq.   | 34.105       | 9-4-1-25 | 70.04        |
| 4-21.5-1-1 et seq. | 72.35        | 9-4-1-26 | 70.05        |
| 4-21.5-3-7         | 152.26       | 9-4-1-29 | 70.06        |
| 4-22-1             | 72.35        | 9-4-1-30 | 73.01        |
| 4-22-1-3           | 72.35        | 9-4-1-33 | 70.15        |
| 4-22-1-30          | 72.35        | 9-4-1-34 | 70.16        |
| 4-22-2             | 72.30, 72.39 | 9-4-1-35 | 70.17, 73.01 |
| 5-2-8-6            | 35.15        | 9-4-1-36 | 70.18, 73.01 |
| 5-4-1 et seq.      | 33.03        | 9-4-1-37 | 70.19        |
| 5-4-1-1—5-4-1-19   | 30.03        | 9-4-1-38 | 70.20        |
| 5-4-1-5.1          | 30.03        | 9-4-1-40 | 72.01        |
| 5-4-1-8            | 30.03        | 9-4-1-41 | 72.02        |
| 5-4-1-9            | 30.03        | 9-4-1-42 | 72.03        |
| 5-4-1-10           | 30.03        | 9-4-1-43 | 72.04        |
| 5-4-1-17           | 30.03        | 9-4-1-44 | 72.05        |
| 5-14-3             | 72.07        | 9-4-1-45 | 72.06        |
| 5-16-1             | 93.28        | 9-4-1-46 | 72.07        |
| 5-17-1             | 93.28        | 9-4-1-47 | 72.08        |
| 5-16-9             | 77.30        | 9-4-1-48 | 72.09        |
| 6-1.1-24-4.5       | 160.03       | 9-4-1-49 | 72.10        |
| 6-1.1-25-1         | 160.03       | 9-4-1-50 | 72.13        |
| 6-1.1-25-4         | 160.03       | 9-4-1-51 | 72.11        |
| 6-1.1-25-4.5       | 160.03       | 9-4-1-53 | 72.12        |
| 6-1.1-25-7.5       | 160.03       | 9-4-1-57 | 72.15        |
| 8-2.1-17-15        | 117.01       | 9-4-1-58 | 72.16        |
| 9-1-2-1(h)         | 79.27        | 9-4-1-59 | 72.17        |
| 9-1-4-52           | 72.45        | 9-4-1-60 | 72.18        |
| 9-2-1              | 72.36        | 9-4-1-61 | 72.19        |
| 9-2-1 et seq.      | 74.01        | 9-4-1-62 | 72.20        |
| 9-4-1-2            | 70.01        | 9-4-1-63 | 71.01        |
| 9-4-1-3            | 70.01        | 9-4-1-64 | 71.02        |
| 9-4-1-4            | 70.01        | 9-4-1-65 | 71.03        |
| 9-4-1-5            | 70.01        | 9-4-1-66 | 71.04        |
| 9-4-1-6            | 70.01        | 9-4-1-67 | 71.05        |
| 9-4-1-7            | 70.01        | 9-4-1-68 | 71.06        |
| 9-4-1-8            | 70.01        | 9-4-1-69 | 71.07        |
| 9-4-1-9            | 70.01        | 9-4-1-70 | 71.08        |
| 9-4-1-10           | 70.01        | 9-4-1-71 | 71.09        |
| 9-4-1-11           | 70.01        | 9-4-1-72 | 71.10        |
| 9-4-1-12           | 70.01        | 9-4-1-73 | 71.90        |
| 9-4-1-13           | 70.01        | 9-4-1-74 | 71.11        |
| 9-4-1-14           | 70.01        | 9-4-1-75 | 71.15        |
| 9-4-1-15           | 70.01        | 9-4-1-76 | 71.16        |

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| 9-4-1-77    | 71.91        | 9-8-6-8    | 75.25     |
| 9-4-1-78    | 71.18        | 9-8-6-9    | 75.26     |
| 9-4-1-79    | 71.19        | 9-8-6-10   | 75.27     |
| 9-4-1-80    | 71.20        | 9-8-6-11   | 75.28     |
| 9-4-1-81    | 71.25        | 9-8-6-12   | 75.29     |
| 9-4-1-82    | 71.26        | 9-8-6-13   | 75.30     |
| 9-4-1-83    | 71.27        | 9-8-6-14   | 75.31     |
| 9-4-1-84    | 71.28        | 9-8-6-15   | 75.32     |
| 9-4-1-85    | 71.45        | 9-8-6-16   | 75.33     |
| 9-4-1-86    | 73.01        | 9-8-6-17   | 75.34     |
| 9-4-1-87    | 73.02        | 9-8-6-18   | 75.35     |
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| 9-4-1-89    | 73.04        | 9-8-6-20   | 75.37     |
| 9-4-1-90    | 73.05        | 9-8-6-21   | 75.38     |
| 9-4-1-91    | 73.06, 73.07 | 9-8-6-22   | 75.39     |
| 9-4-1-105   | 71.92        | 9-8-6-23   | 75.40     |
| 9-4-1-106   | 71.50        | 9-8-6-24   | 75.41     |
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| 9-4-1-111   | 71.31        | 9-8-6-29   | 75.46     |
| 9-4-1-112   | 71.35        | 9-8-6-31   | 75.47     |
| 9-4-1-113   | 71.36        | 9-8-6-32   | 75.02     |
| 9-4-1-114   | 71.37        | 9-8-6-33   | 75.03     |
| 9-4-1-115   | 71.38        | 9-8-6-34   | 75.04     |
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| 9-4-1-124   | 71.71        | 9-8-6-40   | 75.11     |
| 9-4-1-126   | 71.96        | 9-8-6-41   | 75.48     |
| 9-4-1-127.1 | 70.99        | 9-8-6-42   | 75.49     |
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| 9-4-1.5-5   | 71.79        | 9-8-7-3    | 75.99     |
| 9-4-1.5-6   | 71.999       | 9-8-8-1    | 75.16     |
| 9-4-6-1     | 72.21        | 9-8-8-2    | 75.99     |
| 9-4-6-2     | 72.21        | 9-8-9-1    | 74.25     |
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| 9-8-1       | 72.15        | 9-8-12     | 76.02     |
| 9-8-1.6     | 72.15        | 9-11-1-2   | 72.25     |
| 9-8-6-2     | 75.01        | 9-11-1-3   | 72.25     |
| 9-8-6-3     | 75.20        | 9-11-1-4   | 72.25     |
| 9-8-6-4     | 75.21        | 9-11-1-5   | 72.25     |
| 9-8-6-5     | 75.22        | 9-11-1-6   | 72.25     |
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| 9-11-2-1          | 72.26        | 14-28-1-26        | 159.24       |
| 9-11-2-2          | 72.26        | 14-28-4           | 159.01       |
| 9-11-2-3          | 72.26        | 16-1-28-1         | 113.01       |
| 9-11-2-4          | 72.26        | 16-1-39-2         | 70.01        |
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| 9-11-3-1          | 72.26        | 18-1-1.5-10       | 156.02       |
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