

## **Title 3. Health & Public Safety**

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### **Article 1 Animal Control**

#### **Chapter 1 In General**

##### **3.1.1.1 Running at large.**

Sec. 1 (a) No person shall suffer, permit or allow any animal or any dog, cat, or other domestic animal or pet to run at large within the City limits. For purposes of definition, any such animal or dog, cat or other domestic animal or pet which is untethered shall be determined to be "running at large."

(b) All animals found running at large shall be impounded.

(c) The owner of any animal shall be responsible for any damages to the person or property of others caused by said animal while running at large.

(Ord. 1477, § VIII-X, 3-7-1960, Ord. 2373, § 1, 10-5-1976)

##### **3.1.1.2 Exposed to disease.**

Sec. 2 All animals which are afflicted with a contagious or infectious disease and have been found at large, or have come into contact with, or exposed to any public place shall be placed in an animal shelter provided for that purpose by contract or otherwise by the City.

(Ord. 1477, §§ VIII, XI, 3-7-1960)

##### **3.1.1.3 Keeping livestock, fowl or wild animals.**

Sec. 3 It shall be unlawful for any person to have, keep, or otherwise maintain within the corporate limits of the City of Goshen, any livestock, fowl or wild animal excepting domestic animals, unless such livestock, fowl or wild animal is confined not less than one hundred fifty (150) feet from the residence of any other person; provided, however, that no such livestock, fowl or wild animal shall be so kept or maintained if noxious and/or offensive odors are caused to enter upon and cross the real estate owned and/or occupied by another; provided further that any animal of any type may be kept in a zoological garden which must be set up in a prescribed area zoned for such purposes.

(Ord. 432, § 11, 12-19-1921; Ord. 905, § 1, 11-4-1940; Ord. 2805, § 1, 1-6-1958)

**3.1.1.4 Harboring vicious animal.**

Sec. 4 (a) It shall be unlawful for any person to keep or harbor any cross, vicious or unruly animal.

(b) The members of the police department are authorized to kill any dangerous or vicious animal when it is necessary for the protection of any person or property.

(Ord. 149, § 12, 9-14-1903; Ord. 1477, § III, 3-7-1960)

**3.1.1.5 Animals disturbing the peace.**

Sec. 5 No person firm or corporation owning or harboring any dog, cat or other domestic animal or pet shall suffer or permit such animal to disturb the peace or quiet of the neighborhood by barking or making other loud or unusual noise.

(Ord. 1477, § VII, 3-7-1960; Ord. 2373, § 2, 10-5-1976)

**3.1.1.6 Noxious odors.**

Sec. 6 (a) No person shall have, keep or otherwise harbor any dog, cat or other domestic animal or pet in the City of Goshen if noxious and/or offensive odors caused to enter upon or across the real estate owned or occupied by another or upon or across any public right-of-way.

(b) It shall be the duty of the owner of the property where any violation exists to eliminate the violation by removing the substances, materials or animal excrements giving rise to any odor and to maintain the premises free from such unwholesome substances. Should the owner, upon proper notice in writing, fail or refuse to remove the violation, the City may enter upon the premises where the violation exists and abate the violation by removal of the substances, materials or animal excrement giving rise to the offensive odors and by impounding the animal found on the premises. The animal so impounded shall be placed in an animal shelter provided for that purpose.

(Ord. 2373, §§ 3 to 5, 10-5-1976)

**3.1.1.7 Securing animals.**

Sec. 7 (a) It shall be unlawful for any person to leave unattended, any horse or other animal which is hitched to any vehicle in any of the streets or alleys without securely fastening them to some object to prevent them from running away.

(b) It shall be unlawful for any person to tie any horse or other animal within said City without securing the same so that it cannot go upon or over any sidewalk.

(c) It shall be unlawful to hitch any horse or other animal or animals to any shade tree upon or along any street or alley.

(Ord. 149, §§ 2 to 4, 9-14-1903)

## **Chapter 2 Impoundment**

### **3.1.2.1 Redemption.**

Sec. 1 The owner of any animals impounded pursuant to this Code article may, within five (5) days after the impoundment redeem the animal by paying all the expenses incident to impounding such animal, caring for the animal and paying any lawfully imposed and unpaid license fees for such animals that have accrued up to the time of redemption. It shall be the duty of such impounding authority to release such animal to the owner.

(Ord. 1477, § XII, 3-7-1960)

### **3.1.2.2 Disposition when not redeemed.**

Sec. 2 Any animal impounded pursuant to the provisions of this Code article which is not redeemed by its owner within five (5) days after it has been impounded may, at the election of the impounding supervisor, be sold or destroyed in a humane manner.

(Ord. 1477, § XII, 3-7-1960)

### **3.1.2.3 Vaccination of dogs required.**

Sec. 3 No dog impounded for running at large shall be released to any person unless said dog shall, prior to such release, have received vaccination for rabies, and the person receiving said animal upon release has paid the cost of such vaccination.

(Ord. 1477, § X, 3-7-1960)

### **3.1.2.4 Definitions.**

Sec. 4 The following terms and phrases shall apply in the interpretation and enforcement of this Code article:

- 1) **LIVESTOCK and FOWL.** Livestock and fowl shall be construed to mean all animals and fowl that provide food and/or are beasts of burden such as cattle of all species, cows, bulls, horses, mules, ponies, burros, goats, sheep, hogs, chickens, ducks, and any other animals of a similar kind, nature, type or use.

- 2) **DOMESTIC ANIMALS.** Domestic animals shall be construed to be dogs, cats, parakeets, canaries and other small animals or birds which are normally kept within the living quarters of an abode.
- 3) **WILD ANIMALS.** Wild animals shall be construed to mean all poisonous reptiles or any other dangerous or carnivorous wild animal or reptile, any vicious or dangerous domesticated animals or any other animal or reptile of wild, vicious or dangerous propensities. This term shall include but not be restricted to apes, bears, constrictor snakes over six (6) feet in length, coyotes, deer, foxes, gamecocks and other fighting birds, monkeys and wolves.

(Ord. 432, § 11, 12-19-1921; Ord. 905, § 1, 11-4-1940; Ord. 1419, § 1, 1-6-1958;  
Ord. 2805, § 1, 8-6-1981)

## **Chapter 3 Penalties**

### **3.1.3.1 Penalties and disposition of funds.**

Sec. 1 (a) Any person who violates the provisions set forth in this Code article shall be fined in a sum of not less than Five Dollars (\$5.00) nor more than Two hundred Dollars (\$200.00), and each day's continuance shall constitute a separate offense.

(b) All monies received pursuant to this Code article shall be paid to the clerk-treasurer who shall place such monies in the general fund of the City.

(Ord. 1477, § XIII, 3-7-1960; Ord. 2373, §§ 4 and 5, 10-5-1976)

## **Article 2 Fire Prevention and Protection**

### **Chapter 1 In General**

#### **3.2.1.1 Explosives.**

Sec. 1 It shall be unlawful for any person to keep, or have on hand, or store any gunpowder, gun cotton, or other explosive material of like character, in quantities greater than (15) pounds at any time, without having first obtained permit from the Common Council of the City. When kept on hand for the purpose of sale by retail, such substances shall be kept in metallic cans, which shall be securely fastened and closed at all times when not in actual use.

(Ord. 31, § 1, 9-20-1875)

#### **3.2.1.2 Open burning.**

Sec. 2 It shall be unlawful for any person to kindle, set on fire, burn, or cause to be burned,

between the hour of 6:00 p.m. of any day and the hour of 6:00 a.m. of the next succeeding day, except when contained in a stove, oven, or other device equipped and connected to a smokestack or chimney of sufficient height and capacity to effectually carry off the smoke and noxious odor arising therefrom in such a manner as will not be offensive to or injurious to the health and comfort of the inhabitants of the City.

(Ord. 262, § 1, 10-3-1910)

### **3.2.1.3 Burning on the streets.**

Sec. 3 It shall be unlawful for any person to kindle, set fire, burn, or cause to be burned, any combustible substance on any paved street or alley.

(Ord. 262, § 2, 10-3-1910)

### **3.2.1.4 Duty to extinguish certain fires.**

Sec. 4 It shall be unlawful for any person in possession of any real estate within the corporate limits of the City, to knowingly suffer or permit any fire to be kindled or to continue to burn on the real estate or on any street or alley abutting their real estate, in violation of this Code chapter, without making a reasonable effort to extinguish such fire.

(Ord. 262, § 3, 10-3-1910)

### **3.2.1.5 Leaf burning and enforcement.**

Sec. 5 (a) No person shall burn leaves within the City of Goshen.

(b) This shall be enforced in accordance with the provisions of the general enforcement article of this Code. See 1.1.3.1 of this Code.

(Ord. 3569, § 1, 6-1-1993)

## **Chapter 2 Fire Prevention and Enforcement**

### **3.2.2.1 Adoption of the codes.**

Sec. 1 The City of Goshen adopts the National Fire Prevention Association National Codes and Standards, Life Safety Code and the Uniform Building Code.

(Ord. 3318, 10-4-1988)

### **3.2.2.2 Bureau of Fire Prevention.**

Sec. 2 (a) The Bureau of Fire Prevention of the Fire Department of the City of Goshen is established.

(b) The Bureau shall have the power to adopt and promulgate rules and regulations for the safeguarding of life and property within the City of Goshen from the hazards of fire and explosion, subject to prior approval of the Common Council.

(c) The Bureau shall have the power to issue orders for the correction of each class of defects found which shall include without limitation to order any combustible or explosive matter or inflammable condition, or dangerous condition of any kind which may lead to loss or damage by fire or explosion, to be remedied, repaired or removed, and such order shall forthwith be complied with by the owner, occupant or lessee of any premises, place, property, building or thing.

(Ord. 3318, 10-4-1988)

### **3.2.2.3 Establishment and duties of the Fire Investigation Team.**

Sec. 3 There is established a Fire Investigation Team within the Goshen Fire Department which may enforce all national, state and City fire codes applicable within the City of Goshen, and may investigate and gather information and evidence for the prosecution of persons who violate the fire codes and investigate fires of suspicious origin. The Team shall consist of at least one (1) fire officer and at least one (1) police officer of the City of Goshen.

(Ord. 3318, 10-4-1988)

### **3.2.2.4 Variances and special exceptions.**

Sec. 4 The Indiana State Fire Prevention Commission shall have the power to grant variances or special exceptions from any of the provisions of the fire code upon application in writing by an owner or lessee, or his duly authorized agent, and upon a showing of circumstances which prevent or make strict compliance therewith impossible or unduly burdensome, provided that the spirit of the code shall be observed, public safety secured, and substantial justice done.

(Ord. 3318, 10-4-1988)

## **Article 3 Noise Control**

### **Chapter 1 Excessive Noise and Sound**

#### **3.3.1.1 Community noise level standards (excluding motor vehicles and sound amplification**

**systems on public property).**

Sec. 1 (a) Sound Levels by Receiving Land Use.

- 1) No person shall create, cause to be created, permit to be created, or otherwise generate any source of sound in a manner that creates a sound level which exceeds the following limits for the receiving land use category when measured at or within the property line of the receiving land use.

<b><u>Receiving Land Use Category</u></b>	<b><u>Time</u></b>	<b><u>Sound Level Limit</u></b>
Residential Area	7:00 a.m. to 10:00 p.m.	65 dB(A)
	10:00 p.m. to 7:00 a.m.	55 dB(A)
Commercial Area	7:00 a.m. to 10:00 p.m.	75 dB(A)
	10:00 p.m. to 7:00 a.m.	65 dB(A)
Industrial Area	All Times	80 dB(A)

2) When a noise source can be identified and its sound measured in more than one land use category, the sound level limit of the most restrictive land use category shall apply.

(b) Measurement Procedure. The sound level meter shall be operated according to the instrument manufacturer's instructions and as follows:

- 1) Microphone Orientation. The microphone shall be pointed toward the allegedly offensive noise source, unless the instrument manufacturer's instructions specifically indicate otherwise.
- 2) Meter Setting. The meter shall be set for the A-weighted network and "slow" response mode.
- 3) Calibration. An external calibration check and battery check shall be made before and after each use.
- 4) Meter Readings. The recorded reading shall be the highest sound level obtained with the allegedly offensive noise source in operation, disregarding unrelated peaks due to extraneous ambient noises.
- 5) Ambient Conditions. Measurements shall be made only when the A-weighted ambient sound level, including wind effects and all sources other than the noise source being measured, is at least 10 dB(A) lower than the sound level of the noise source being measured, provided however that no source shall emit noise in excess of 86 dB(A) when measured 25 feet or more from the source.
- 6) Sound levels shall be measured at the approximate location of the property line or the boundary of the public property, at a height of at least four feet above the immediate surrounding surface.
- 7) In no case shall the operator or observer be closer than two feet from the system's

microphone, nor shall he locate himself between the microphone and the noise source being measured.

(c) Specifically Excluded. This Code section does not apply to motor vehicles or sound amplification systems operated on public property.

(Ord. 3899, § 2, 7-22-1999)

### **3.3.1.2 Noise level standards for motor vehicles and sound amplification systems on public property.**

Sec. 2 (a) Sound Levels by Sound Amplification System. No person shall play, use, operate or permit to be played, used or operated any sound amplification system if it is located in or on any of the following:

- 1) Any public property, including, but not limited to, any street, alley, highway, sidewalk, park or other public property; or
- 2) Any motor vehicle on a public street, alley, highway, park or other public property;

if the sound generated is plainly audible to any other person measured at a distance at least 100 feet from the sound amplification system.

(b) Sound Levels by Motor Vehicles.

- 1) No person shall operate any motor vehicle on a public street, alley, highway, park or other public property in which the engine, muffler, exhaust and/or other noise control equipment have been altered, removed or maintained in such disrepair as to generate a sound plainly audible to any other person measured at a distance at least 100 feet from the motor vehicle.
- 2) No person operating a motor vehicle containing a jake brake shall apply the jake brake within the City limits.

(c) Measurement Procedures. Measurement of the audible sound shall be by the auditory senses and based upon direct line of sight.

(Ord. 3899, § 3, 7-22-1999)

### **3.3.1.3 Sound amplifiers.**

Sec. 3 It shall be unlawful for any person knowingly or wantonly to use or operate, or cause to be used or operated, any mechanical device, machine, apparatus or instrument for intensification or amplification of the human voice or any sound or noise, in any public or private place in such manner,

that the peace and good order of the neighborhood is disturbed, or that persons owning, using, or occupying property in the neighborhood are disturbed or annoyed.

(Ord. 935, § 1, 8-4-1941)

### **3.3.1.4 Exemptions.**

Sec. 4 The sound levels in 3.3.1.1, 3.3.1.2 and 3.3.1.3 of this Code, shall not apply to sounds emitted from:

- 1) Authorized emergency vehicles, public safety vehicles or from public safety officials acting in the scope of their authority.
- 2) Vehicle horns, sirens or other devices used as a warning of danger or an emergency.
- 3) Passing trains.
- 4) Properly operating building alarms or vehicle alarms.
- 5) Stationary emergency signaling devices, such as severe weather sirens.
- 6) Any emergency work.
- 7) Communication of any message in any public forum between the hours of 8:00 a.m. and 8:00 p.m.
- 8) Any activity authorized by the Board of Public Works and Safety, Board of Parks and Recreation, or any other governmental body having jurisdiction and control over the property, including parades, festivals, sporting events, concerts or firework displays.
- 9) Any recreational and educational activity including, but not limited to, school bands and neighborhood ball games. Any recreational and educational activity taking place between the hours of 10:00 p.m. and 7:00 a.m. shall not exceed the maximum sound levels specified in 3.3.1.1 or 3.3.1.2 of this Code.
- 10) Any construction equipment operated during the time period between 7:00 a.m. and 10:00 p.m., provided that such equipment shall be equipped with a properly installed muffler in good working order. Construction equipment operated between the hours of 10:00 p.m. and 7:00 a.m. shall not exceed the maximum sound levels specified in 3.3.1.1 or 3.3.1.2 of this Code.
- 11) Any detonation of explosives used to fragment rock for mining, quarrying, excavation and construction.
- 12) Any domestic power equipment operated during the time period between 7:00 a.m. and 10:00

- p.m., provided that such equipment does not exceed a sound level of 80 dB(A) when measured at a minimum of 25 feet from the noise source. Domestic power equipment operated between the hours of 10:00 p.m. and 7:00 a.m. shall not exceed the maximum sound levels specified in 3.3.1.1 or 3.3.1.2 of this Code.
- 13) Licensed refuse collection vehicles operated during the time period between 7:00 a.m. and 10:00 p.m. Sounds emitted from licensed refuse collection vehicles operated between the hours of 10:00 p.m. and 7:00 a.m. shall not exceed the maximum sound levels specified in 3.3.1.1 or 3.3.1.2 of this Code.
- 14) Aircraft.
- 15) Noise sources within multi-family dwellings, offices, apartment complexes, condominiums, and similar structures occupied by more than one tenant which impact only those persons within the same dwelling, office, complex or building.

(Ord. 3899, § 4, 7-22-1999)

#### **3.3.1.5 Undue hardship.**

Sec. 5 Applications for a permit for relief from the sound level limits designated in this Code article may, on the basis of undue hardship, be made to the Board of Public Works and Safety. Any permit granted by the Board of Public Works and Safety hereunder shall contain all conditions upon which said permit has been granted and shall specify a reasonable time that the permit shall be effective. The Board of Public Works and Safety may grant the relief as applied for only if it is found that:

- 1) Additional time is reasonably necessary for the applicant to alter or modify his activity or operation to comply with this Code article; or
- 2) The activity, operation or noise source will be of a temporary duration, and cannot be done in a manner that would comply with this Code article; and
- 3) No other reasonable alternative is available to the applicant, and
- 4) The applicant represents and the Board of Public Works and Safety finds that the noise source as permitted will not violate recognized safety standards. The Board of Public Works and Safety may prescribe any reasonable conditions or requirements it deems necessary to minimize adverse effects upon the community or the surrounding neighborhood.

(Ord. 3899, § 5, 7-22-1999)

**3.3.1.6 Enforcement and penalties.**

Sec. 6 (a) A citation may be issued for a violation under this Code article, subjecting the violator to a fine up to Five hundred Dollars (\$500.00). Each day that a violation occurs is a separate offense.

(b) The citation shall be filed with the City of Goshen Ordinance Violations Bureau or with any court of competent jurisdiction in Elkhart County, Indiana.

(c) For the purposes of this Code article, the violator shall be the person or persons who created, caused to be created, permitted to be created or otherwise generated any source of sound in a manner that creates a sound level exceeding the limits for the receiving land use category as established by this Code article; the person or persons in possession of a sound amplification system played, used or operated in violation of this Code article; or the person in control of a motor vehicle operating in violation of this Code article.

(Ord. 3899, § 6, 7-22-1999)

**3.3.1.7 Definitions.**

Sec. 7 For the purposes of this Code article, the following words, terms and phrases shall have the meanings set forth:

- 1) COMMERCIAL AREA. Commercial area shall mean any parcel of land zoned as B-1, B-2, B-3 or B-4 under the Zoning Ordinance.
- 2) dB(A). dB(A) shall mean the intensity of a sound expressed in decibels read from a calibrated sound level meter using the A-level weighting scale and the slow meter response, as specified by the American National Standards Institute.
- 3) DECIBEL. Decibel shall mean a unit measure of sound level. The symbol is dB.
- 4) DOMESTIC POWER EQUIPMENT. Domestic power equipment shall mean any equipment or device rated at 20 horsepower or less and used for home or building repairs and grounds maintenance.
- 5) EMERGENCY WORK. Emergency work shall mean any activities performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by existing or imminent peril.
- 6) INDUSTRIAL AREA. Industrial area shall mean any parcel of land zoned as M-1 or M-2 under the Zoning Ordinance.
- 7) PERSON. Person shall mean any individual, association, partnership or corporation.

- 8) **PROPERTY LINE.** Property line shall mean the real or imaginary line and its vertical extension which separates the real property owned, leased or occupied by any person from contiguous real property owned, leased or occupied by any other person.
- 9) **PUBLIC PROPERTY.** Public property shall mean all real property which is owned or controlled by a governmental entity, and shall include any public rights-of-way, public buildings, parks and waterways.
- 10) **PUBLIC RIGHT-OF-WAY.** Public right-of-way shall mean any street, avenue, boulevard, highway, road, thoroughfare, sidewalk, alley or any other property which is owned or controlled by a governmental entity.
- 11) **RESIDENTIAL AREA.** Residential area shall mean any parcel of land zoned as R-1, R-1S, R-2, R-3, R-4 or A-1 under the Zoning Ordinance.
- 12) **SOUND AMPLIFICATION SYSTEM.** Sound amplification system shall mean any apparatus used for the amplification of sounds from any radio, tape player, cassette player, compact disc player, loudspeaker, sound amplifier, alarm or other sound-generating device, including any apparatus for the amplification of the human voice.

(Ord. 3899, § 1, 7-22-1999)

## **Article 4 Public Gatherings**

### **Chapter 1 Parades and Meetings**

#### **3.4.1.1 Permit required.**

Sec. 1 No person shall conduct a parade or procession upon any street or public way or hold any open air public meeting upon any ground abutting upon any street or public way without a written permit issued by the Board of Public Works and Safety.

(Ord. 740, § 1, 5-2-1932; Ord. 2690, § 1, 5-13-1980)

#### **3.4.1.2 Permit application.**

Sec. 2 An application for the permit required by this Code article shall be made in writing to the Board of Public Works and Safety by the person in charge of, control of, or responsible for the activity for which the permit is sought. In such application the applicant shall set forth the route along which the parade or procession is to proceed, its starting time and the names of those in control of it, or responsible for it, the time at which the public meeting is to be held and its probable duration, as appropriate.

(Ord. 740, § 1, 5-2-1932; Ord. 2690 § 1, 5-13-1980)

### **3.4.1.3 Permit issuance.**

Sec. 3 Upon application being made for the permit required by this Code article, the Board of Public Works and Safety shall investigate or cause to be investigated the person making such application and the truth of the statements made in such application regarding the purpose or object of the parade, procession or open air public meeting, and if it is found that such parade, procession or open air public meeting is not to be held for any unlawful purpose and will not in an manner tend to a breach of peace, or unnecessarily interfere with the public use of the streets and ways of the City or the peace and quiet of the inhabitants thereof, the Board of Public Works and Safety shall issue such permit to the person making application therefore, without fee or charge.

(Ord. 740, § 1, 5-2-1932; Ord. 2690, § 1, 5-13-1980)

### **3.4.1.4 Illegal participation.**

Sec. 4 Any person who marches, rides or in any other manner participates in any parade or procession upon such street or public way, attends any open air public meeting held upon any ground abutting upon any street or public way for which a permit in writing has not been first obtained from the Board of Public Works and Safety shall be in violation of this Code article and penalized according to 1.1.3.1 of this Code.

(Ord. 740, § 2, 5-2-1932; Ord. 2683, § 1, 5-13-1980; Ord. 2690, § 1, 5-13-1980)

## **Article 5 Firearms within City Limits**

### **Chapter 1 Firearms within City Limits**

#### **3.5.1.1 Discharging firearms, cannons; detonation of explosives.**

Sec. 1 (a) It shall be unlawful for any person to discharge any firearm, cannon or detonate any explosives any place within the corporate limits of the City, or to assist any other person or persons to engage in any such discharging or detonation unless such person has been granted special permission by the Board of Public Works and Safety of the City of Goshen; provided, however this Code section shall not apply to the following:

- 1) Any law enforcement officer who shall so discharge a firearm in the lawful performance of his duty.
- 2) Any person who shall so discharge a firearm in a shooting gallery licensed pursuant to regulations established by the Board of Public Works and Safety of the City;

3) Any person who shall so discharge a firearm in the protection of life or property when the surrounding facts and circumstances justify such action; or

4) Any person who shall discharge a firearm during ceremonial occasions approved by the Board of Public Works and Safety of the City.

(b) Any person engaging in any of the unlawful activity described in 3.5.1.1 (a) shall be guilty of an ordinance violation and shall be fined not more than One thousand Dollars (\$1,000.00).

(Ord. 149 § 8, 9-14-1903; Ord. 2516, §§ 1 and 2, 7-17-1978)

## **Article 6 Curfews**

### **Chapter 1 Curfew Hours for Minors**

#### **3.6.1.1 Curfew Violation.**

Sec. 1 (a) It is a violation of this Code chapter for a child fifteen (15), sixteen (16), or seventeen (17) years of age to be in a public place within the corporate limits of the City of Goshen at any time during the following hours:

- 1) Between one o'clock in the morning (1:00 a.m.) and five o'clock in the morning (5:00 a.m.) on Saturday or Sunday, and
- 2) Between eleven o'clock in the evening (11:00 p.m.) on Sunday, Monday, Tuesday, Wednesday or Thursday and five o'clock in the morning (5:00 a.m.) the following day,

except in the following circumstances:

- 1) The child is accompanied by: a) a parent, or b) a guardian.
- 2) The child is traveling to or from, or is present at any of the following:
  - (A) lawful employment;
  - (B) a religious event or worship;
  - (C) a school sanctioned event;
  - (D) any political event or activity;
  - (E) any activity involving the exercise of the child's rights protected under the First Amendment to the United States Constitution or Article 1, Section 31 of the Constitution of the State of Indiana. These include, but are not limited to the exercise of freedom of speech, freedom of religion, the right of assembly, or the right to petition government.

(F) an activity conducted by a non-profit or government entity that provides recreation, education, training, or other care under the supervision of one (1) or more adults.

(G) interstate or international travel from a location outside Indiana, or to a location outside Indiana.

(H) an emergency involving the protection of a person or property from a significant threat of serious bodily injury or substantial property damage.

3) The child is out past curfew with the consent of a parent or a guardian.

(b) It is a violation of this Code chapter for a child less than fifteen (15) years of age to be in a public place within the corporate limits of the City of Goshen at any time after eleven o'clock in the evening (11:00 p.m.) or before five o'clock in the morning (5:00 a.m.) on any day, except in the following circumstances:

1) The child is accompanied by: a) a parent, or b) a guardian.

2) The child is traveling to or from or is present at any of the following:

(A) lawful employment;

(B) a religious event or worship;

(C) a school sanctioned event;

(D) any political event or activity;

(E) any activity involving the exercise of the child's rights protected under the First Amendment to the United States Constitution or Article 1, Section 31 of the Constitution of the State of Indiana. These include, but are not limited to the exercise of freedom of speech, freedom of religion, the right of assembly, or the right to petition government.

(F) an activity conducted by a non-profit or government entity that provides recreation, education, training, or other care under the supervision of one (1) or more adults.

(G) interstate or international travel from a location outside Indiana, or to a location outside Indiana.

(H) an emergency involving the protection of a person or property from a significant threat of serious bodily injury or substantial property damage.

3) The child is out past curfew with the consent of a parent or a guardian.

(Ord. 4349 § 1, 3-21-2006)

**3.6.1.2 Authority to Stop.**

Sec. 2 During the curfew hours, a law enforcement officer or an ordinance enforcement officer who observes a person that the officer reasonably believes to be less than eighteen (18) years of age may briefly stop such person to ascertain the person's age. If the law enforcement officer or ordinance enforcement officer determines the person is less than eighteen (18) years of age, the officer may proceed to determine the purpose for which the person is in public past curfew.

(Ord. 4349 § 2, 3-21-2006)

**3.6.1.3 Verification.**

Sec. 3 (a) If a law enforcement officer or an ordinance enforcement officer finds a person less than eighteen (18) years of age who is not accompanied by a parent or a guardian, and is not engaged in a permitted purpose as set forth in this Code chapter, the officer may attempt to verify that a parent or a guardian has specifically consented to the child being in public on this occasion during the current curfew period. The verification may include calling or visiting the parent or guardian to determine that the parent or guardian consented to the child being in public past curfew.

(b) If the officer does not confirm that the child was in public with the consent of a parent or a guardian, the officer shall present the child with a form of affidavit that needs to be filled out, signed by the parent or guardian, notarized and presented to the Goshen City Police Department within seventy-two (72) hours of the stop. The parent or guardian may execute the affidavit, have their signature notarized, and deliver the notarized affidavit to the Goshen City Police Department within seventy-two (72) hours of the stop to establish that the child had their consent to be in public past curfew on the occasion the child was stopped. Failure to execute the affidavit raises a rebuttable presumption that the child was in public without the consent of a parent or a guardian.

(Ord. 4349 § 3, 3-21-2006)

**3.6.1.4 Section 4. Authority of Parent or Guardian.**

Sec. 4 If the child does not reside with a parent or guardian, any person over eighteen (18) years of age with whom the child resides may consent to the child in being in public during any curfew hours.

(Ord. 4349 § 4, 3-21-2006)

**3.6.1.5 Exemption.**

Sec. 5 This Code chapter does not apply to persons less than eighteen (18) years of age who

have been emancipated by judicial action under Indiana Code 31-37-19-27 or Indiana Code 31-6-4-15.7, judicial action to emancipate in another state or foreign jurisdiction, or by having married.

(Ord. 4349 § 5, 3-21-2006)

### **3.6.1.6 Enforcement.**

Sec. 6 (a) Once a law enforcement officer or an ordinance enforcement officer has determined that a person less than eighteen (18) years of age is in a public place past curfew, that the person less than eighteen (18) years of age is not in a public place for one of the permitted purposes set forth in this Code chapter, and does not have the consent of a parent or a guardian to be in public past curfew, the law enforcement officer or ordinance enforcement officer may issue a notice of the violation of this curfew Code chapter with instructions for the child to appear in court at a specific time and place.

(b) No Code chapter violation shall be issued at the time of the stop, unless it can be determined that the child's parent or guardian did not consent to the child being in public past curfew. If no affidavit is received from the child's parent or guardian by the Goshen City Police Department within seventy-two (72) hours of the stop, a notice of a Code chapter violation may be issued to the child after the seventy-two (72) hour period.

(c) In all other respects, this Code chapter shall be enforced in accordance with 1.1.3 of this Code as adopted in 2004, and as the City Code may be amended from time to time.

(Ord. 4349 § 6, 3-21-2006)

### **3.6.1.7 Penalty**

Sec. 7 Any person who violates this ordinance may be subject to a fine of up to Five Hundred Dollars (\$500.00).

(Ord. 4349 § 7, 3-21-2006)

## **Article 7 Smoking Prohibition**

### **Chapter 1 Prohibiting Smoking**

#### **3.7.1.1 Prohibitions; Requirements**

Sec. 1 (a) Smoking is prohibited in all city-owned or operated buildings, enclosed facilities, or vehicles.

(b) Smoking is prohibited in any portion of buildings or enclosed facilities, whether publicly or

privately owned that are open for public accommodation. Places of public accommodation include, but are not limited to, the following:

- 1) An inn, hotel, motel or other place of lodging;
- 2) A restaurant, bar, or other establishment serving food or drink;
- 3) A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;
- 4) An auditorium, convention center, lecture hall, or other place of public gathering;
- 5) A bakery, grocery store, clothing store, hardware store, shopping center, or other sales or retail establishment;
- 6) A laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other such establishment;
- 7) A terminal, depot, or other station used for public transportation;
- 8) A museum, library, gallery, or other place of public display or collection;
- 9) A park, zoo, amusement park, or other place of recreation;
- 10) A nursery, elementary, secondary, undergraduate, or postgraduate school, or other place of education;
- 11) A day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and
- 12) A gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

(c) Smoking is prohibited within all buildings and enclosed facilities at places of employment. This includes, but is not limited to, the following:

- 1) Common work areas;
- 2) Auditoriums;
- 3) Classrooms;
- 4) Conference and meeting rooms;
- 5) Private offices;
- 6) Elevators and hallways;

- 7) Medical facilities;
- 8) Cafeterias;
- 9) Employee lounges;
- 10) Stairs;
- 11) Restrooms; and
- 12) Vehicles.

(d) Smoking is prohibited within fifteen feet (15') of any entrance to a place of public accommodation or place of employment.

(e) The owner, operator or manager shall remove all ash trays, lighters, and matches from all areas where smoking is prohibited by this ordinance.

(f) Each employer having a building or enclosed facility where smoking is prohibited by this Code article shall adopt, maintain and enforce a written smoking policy consistent with this Code article. The written policy shall be given and discussed with each existing employee within ninety (90) days of the adoption of this Code article and with each new employee within ten (10) days of the hiring of such new employee.

(g) Every place of public accommodation and every place of employment where smoking is allowed under the provisions of this Code article must post a conspicuous and clearly legible sign at each entrance that warns that tobacco smoke may be present.

(h) No person or entity shall discharge, refuse to hire or retaliate in any manner against an employee, applicant for employment, or customer because of any attempt to enforce the provisions of this Code article by such employee, applicant or customer.

(Ord. 4417 § 1, 4-17-2007)

### **3.7.1.2 Exemptions**

Sec. 2 (a) Notwithstanding the smoking prohibitions in 3.7.1.1 (a), (b), (c), and (d) above, smoking will be permitted in the following locations:

- 1) Hotel and motel rooms that are rented to guests and are designated as smoking rooms, except not more than twenty-five percent (25%) of rooms rented to guests in a hotel or motel may be so designated. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms;

- 2) Retail tobacco stores if smoke is not allowed to infiltrate into other areas of public accommodation or employment;
- 3) Private and semi-private rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted provided that smoke from these places does not infiltrate into other areas of public accommodation or employment;
- 4) Family-owned and operated and self-employed businesses in which all employees are related to the owner or the self-employed person, but only in the enclosed areas of these businesses and offices that are not open to the public;
- 5) Private clubs;
- 6) Any hall, room, or assembly area owned or operated by a church, synagogue, or other place of worship if smoking is a part of a religious ceremony or an essential part of the religious tenets; and
- 7) A bar meeting the following qualifications:
  - (A) the bar possesses a valid alcoholic beverage license from the State of Indiana;
  - (B) the bar allows no patron or employee under the age of eighteen (18) to enter at any time; and
  - (C) if any portion of the building containing the bar allows patrons or employees under the age of eighteen (18) to enter, the bar must also:
    - (i) have an exhaust and air handling system separate from the remaining portions of the building;
    - (ii) have an exhaust and air handling system capable of collecting and removing smoke from the air and discharging the smoke to an approved location outside the building; and
    - (iii) have separation from the rest of the building by walls, windows, and doors that remain closed except to allow patrons and employees to enter and exit. There must be no open areas between the bar and the remainder of the building.

(b) Smoking Permit. Any building or enclosed facility seeking to permit smoking in any portion of the building or enclosed facility under an exemption listed in this section shall apply for a smoking permit with the Goshen Building Department. Before issuing any permit, the applicant shall pay an annual fee as set forth in the ordinance. The Building Department shall inspect the building or enclosed facility to determine that the building or enclosed facility meets all requirements under which

the building or enclosed facility is requesting exemption.

(c) Required Signage. Any building or enclosed facility which permits smoking under an exemption listed in this section must post a conspicuous, clearly legible sign at all public entrances to the building or enclosed facility indicating that smoking is permitted in the area.

(Ord. 4417 § 2, 4-17-2007)

### **3.7.1.3 Enforcement; Penalty**

Sec. 3 (a) An action to enforce the prohibitions and requirements of this Code article may be initiated by the City by filing a notice of violation of this Code article in a court of competent jurisdiction within the County of Elkhart, specifying the nature of the violation and the section of this Code article violated.

(b) Upon a determination that a person or an entity against which a violation of this Code article is brought has committed an act prohibited by this Code article or failed to meet a requirement imposed by this Code article, the court may impose a fine of up to Three Hundred Dollars (\$300.00) and shall order the violator to pay court costs.

(c) Each day on which a violation of this Code article occurs, constitutes separate and distinct violation.

(d) An appeal of the court=s determination shall be made in accordance with Indiana Trial Rules governing appeals.

(Ord. 4417 § 3, 4-17-2007)

### **3.7.1.4 Definitions**

Sec. 4 For the purposes of this Code article, the following words, terms and phrases shall have the meanings set forth:

- 1) Enclosed facilities are areas enclosed on all sides by walls or windows (exclusive of door or passage ways) which extend from floor to ceiling.
- 2) Private clubs are facilities requiring a membership where entry into and the use of the facility is restricted to members and guests of members.
- 3) Retail tobacco stores are retail stores utilized for the sale of tobacco or tobacco products and accessories and in which the sale of other products is merely incidental. It does not include a retail store which sells food or beverages.

- 4) Smoke or smoking means the act of lighting, carrying, inhaling, exhaling or leaving a lighted cigar, cigarette or pipe of any kind.

(Ord. 4417 § 4, 4-17-2007)

## **Article 8 Regulating Fireworks**

### **Chapter 1 Regulating the Use, Discharge or Ignition of Consumer Fireworks**

#### **3.8.1.1 Use, Discharge or Ignition Prohibited**

Sec. 1 (a) The use, discharge or ignition of consumer fireworks by any person or other entity is prohibited in the corporate limits of the City of Goshen except during the following periods:

- 1) Between the hours of 5:00 p.m. and two (2) hours after sunset on June 29, June 30, July 1, July 2, July 3, July 5, July 6, July 7, July 8, and July 9;
- 2) Between the hours of 10:00 a.m. and 12:00 midnight on July 4; and
- 3) Between the hours of 10:00 a.m. on December 31 and 1:00 a.m. on January 1.

(b) Consumer firework means a small firework that is designed primarily to produce visible effects by combustion, and that is required to comply with the construction, chemical composition, and labeling regulations promulgated by the United States Consumer Product Safety Commission under 16 CFR 1507. The term also includes some small devices designed to produce an audible effect, such as whistling devices, ground devices containing fifty (50) milligrams or less of explosive composition, and aerial devices containing one hundred thirty (130) milligrams or less of explosive composition. Propelling or expelling charges consisting of a mixture of charcoal, sulfur, and potassium nitrate are not considered as designed to produce an audible effect.

- 1) Consumer fireworks include:

- (A) aerial devices, which include sky rockets, missile type rockets, helicopter or aerial spinners, roman candles, mines, and shells;
- (B) ground audible devices, which include firecrackers, salutes, and chasers; and
- (C) firework devices containing combinations of the effects described in clauses (1) and (2).

- 2) Consumer fireworks do not include:

- (A) dipped sticks or wire sparklers. However, total pyrotechnic composition may not exceed one hundred (100) grams per item. Devices containing chlorate or perchlorate salts

may not exceed five (5) grams in total composition per item.

(B) cylindrical fountains;

(C) cone fountains;

(D) illuminating torches;

(E) wheels;

(F) ground spinners;

(G) flitter sparklers;

(H) snakes or glow worms;

(I) smoke devices; and

(J) trick noisemakers, which include party poppers, booby traps, snappers, trick matches, cigarette loads, and auto burglar alarms.

(c) The use, discharge or ignitions of all other fireworks are governed by Indiana state statutes.

(Ord. 4428 § 1, 6-19-2007)

### **3.8.1.2 Permits**

Sec. 2 Notwithstanding Section 1, the use, discharge or ignition of consumer fireworks may be permitted with the approval of the Board of Public Works and Safety on real estate owned by a government entity. The approval shall specify the real estate upon which the use, discharge or ignition will be permitted and the date(s) on which the use, discharge or ignition will be permitted which may not exceed seventy-two (72) hours.

(Ord. 4428 § 2, 6-19-2007)

### **3.8.1.3 Enforcement**

Sec. 3 This ordinance shall be enforced in accordance with the applicable provisions of Chapter 18, Enforcement, of the Goshen City Code as adopted in 2004, and as the City Code may be amended from time to time.

(Ord. 4428 § 3, 6-19-2007)

### **3.8.1.4 Penalty**

Sec. 4 Any person or other entity who violates this ordinance may be fined up to Five Hundred

Dollars (\$500.00) for each violation.

(Ord. 4428 § 4, 6-19-2007)

**– End of Title 3 –**