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CHAPTER 6

PUBLIC HEALTH & SAFETY

ARTICLE 1. GENERAL PROVISIONS.

Sec. 6-1 City's Authority To Regulate.¹⁰²

The City may regulate the conduct, or use or possession of property which might endanger the public health, safety, or welfare of its citizens.

Sec. 6-2 Authority To Regulate Air and Sound.¹⁰³

The City may regulate the introduction of any substance or odor into the air, or any generation of sound.

Sec. 6-3 Authority To Regulate Public Gatherings.¹⁰⁴

The City may regulate public gatherings, such as shows, demonstrations, fairs, conventions, sporting events, and exhibitions.

Sec. 6-4 Authority To Establish Police and Law Enforcement Systems.¹⁰⁵

The City may establish, maintain, and operate a police and law enforcement system to preserve public peace and order and may provide facilities and equipment for that system.

Sec. 6-5 Authority to Establish Firefighter and Fire Prevention System.¹⁰⁶

The City may establish, maintain, and operate a fire fighting and fire prevention system and may provide facilities and equipment for that system.

Sec. 6-6 Offenses Against Public Health, Order, and Decency.¹⁰⁷

a. All offenses against public health, order, or decency not addressed by this *Code* shall be governed by applicable state statute.

b. Except as specifically set forth herein, any violation of any provision of this Chapter shall be subject to the penalties provided by Sec. 1-11 of *Terre Haute City Code*.

¹⁰² *I.C.* § 36-8-2-4, authorizes the regulation of conduct and property for reasons of public health, safety and welfare.

¹⁰³ *I.C.* § 36-8-2-8, authorizes the regulation of air and sound.

¹⁰⁴ *I.C.* § 36-8-2-9, authorizes the regulation of public gatherings.

¹⁰⁵ *I.C.* § 36-8-2-2, sets forth the authority to establish a police and law enforcement system.

¹⁰⁶ *I.C.* § 36-8-2-3, sets forth the authority to establish a fire fighting system.

¹⁰⁷ *I.C.* § 35-45-1-1, *et seq.*, address such offenses.

Sec. 6-7 through Sec. 6-10 Reserved for Future Use.

ARTICLE 2. POLICE DEPARTMENT.¹⁰⁸

Division I. In General.

Sec. 6-11 Police Department.¹⁰⁹

As addressed in Sec. 2-48 of this *Terre Haute City Code*, the Police Department is an Executive Department of the City.

Sec. 6-12 through Sec. 6-14 Reserved for Future Use.

Division II. Police Merit Plan.

Sec. 6-15 Merit Plan Incorporated by Reference.

The designated provisions of the higher statute designated *I.C.* § 19-1-29.5-1 through § 19-1-29.5-29, which is the present Merit System for the Terre Haute Police Department, are hereby amended as attached hereto as Exhibit “A,” a twelve (12) page document, pursuant to *I.C.* § 19-1-29.5-25, as incorporated hereto, it is hereby stipulated that all active employees of the Terre Haute Police Department age sixty five (65) or older, on or before December 31, 2015, shall remain eligible for employment until age seventy (70). Additionally, all individuals actively employed by the Terre Haute Police Department on or before December 31, 2015, who have not or will not complete his or her thirty second (32nd) year of service by the age of sixty five (65), shall continue to be eligible for employment, on the basis of his or her age, to complete thirty two (32) total years of employment. Any subsequent amendment of Title 19 will require a referendum of the active membership of the Terre Haute Police Department. Said referendum will require a majority vote of the active membership of the police department in favor of any proposed further amendment prior to final action by City Council (Gen. Ord. No. 14, 2015 As Amended, 12-10-15).

¹⁰⁸ *I.C.* § 36-8-3-1, *et seq.*, address safety boards in second and third class cities.

¹⁰⁹ *I.C.* § 36-8-4-1, *et seq.*, address police and fire employment policies in cities.

Exhibit "A"

I.C. 19-1-29.5 ET SEQ. (TITLE 19)
AS AMENDED PURSUANT TO GENERAL ORDINANCE

Amended Provisions are in Italics

**Title 19 Code
Provision**

Amendment

I.C. 19-1-29.5-2
*(Terre Haute
Rev. 2015)*

Civil Service Commission – Membership – Qualifications – Selection – Terms. Within thirty (30) days after this chapter (19-1-29.5-1 - 19-1-25.5-29) becomes effective (July 1, 1972), a civil service commission for the police department shall be appointed, as hereinafter provide, in such cities of the second class. The civil service commission for the police department, hereinafter referred to as the commission shall consist of three (3) members. The members shall be resident voters of the city and persons of good moral character, and shall be known and designated as the civilian members of said commission. The civilian members of the commission shall serve for a term of three (3) years and until their successors shall have been appointed and qualified: Provided, however, That in the first instance, one (1) of the civilian members of the commission shall be appointed for a term of one (1) year by the mayor; one (1) of such civilian members shall be appointed for a term of two (2) years by the common council; one of such civilian members shall be appointed for a term of three (3) years upon nomination by the active membership of the police department and he shall be appointed by the mayor of the city after nominated. In the event any official or body fails to name his/*her* or its appointment or nominee within the time provided herein, such appointment of nomination to the commission shall be made by the circuit judge of the county involved. The appointment by the common council shall be the person receiving the highest number of votes of the councilmen present and voting at the meeting when the appointment

I.C. 19-1-29.5-3
*(Terre Haute
Rev. 2015)*

Procedure for selection of Commission Member by Members of Police Department. The Nomination to be made by the membership of the police department shall be made at a meeting specifically called for the purpose by the board of public works and safety, hereinafter referred to in this chapter (19.1-29.5.1 – 19-1-29.5-29) as the board. The board shall give at least one (1) week's notice of said meeting to all active members of the police

time, place and purpose of the meeting. No one shall be entitled to be present at the meeting and exercise the right to vote unless he is an active member of the police department. Active members who are unable to attend any such meeting may vote by written proxy: Provided, That no active member present at any meeting shall be entitled to hold and to vote the proxy of more than one (1) absent member. An active member of the police department shall be selected to act as *chairperson* of the meeting. Voting shall be by secret ballot; and the person receiving the highest number of votes, including all proxy votes, shall be named as the nominee of the police department.

I.C. 19-1-29.5-4
(Terre Haute
Rev. 2015)

I.C. 19-1-29.5-4 Commission Members - Oath of Office - Compensation.

(a) *Each commissioner must have been a legal resident of the unit (City of Terre Haute, Indiana) for three (3) consecutive years immediately preceding the commissioner's term and must be a person of good moral character. The legislative body may, upon the recommendation of the Board of Public Works, determine a per diem to be paid to each commissioner for each day of actual service for the commission. A commissioner must be at least twenty-one (21) years of age. A commissioner may not be an active member of a police or fire department or agency and not more than two (2) of the commissioners may be past members of a police or fire department or agency. In addition, a person may not serve on the commission if the person receives any remuneration as salary from the unit (City of Terre Haute, Indiana).*

(b) *Each commissioner shall take an oath of office to conscientiously discharge the commissioner's duties. A signed copy of the oath shall be filed with the Board of Public Works.*

I.C. 19-1-29.5-5
(Terre Haute
Rev. 2015)

Commission Members – Vacancies – Removal – Quorum. Civilian membership vacancies, for any cause, shall be filled by appointment in the same manner as the appointment of any member of the commission. The *Board of Public Works* may remove any member of the commission at any time for malfeasance, nonfeasance, removal from such city, or inability to serve, which removal shall be under the same rules of procedures that apply to removal of members of the police department of such city. Two (2) civilian members of the commission shall constitute a quorum for the transaction of business.

I.C. 19-1-29.5-6
(*Terre Haute*
Rev. 2015)

Meetings – Majority Vote Required – Officers – Records of Proceedings.

The commission shall establish rules for the government of the commission and included in said rules shall be the time and place for the holding of regular monthly meetings and such special meetings throughout the year as may be deemed necessary for it to transact the business of the commission. A lawful transaction of the business of the commission requires a majority vote of the civilian members. Each year the commission shall select, from its civilian members, a president, a vice-president and a secretary. The commission shall make and keep a permanent record of its proceedings.

I.C. 19-1-29.5-7
(*Terre Haute*
Rev. 2015)

Rules and Regulations – Police Appointments – Promotions – Demotions – Ratings for Promotion – Examinations – Performance Ratings –

Review. Such commission shall be authorized and directed to prepare, adopt, promulgate, supervise and enforce, rules and regulations as follows:

- (1) To govern the selection, appointment, reappointment and reinstatement of persons to be employed as members of the police department.
- (2) To govern promotions and demotions of members of the police department. Such rules and regulations shall provide that the following three (3) factors shall be the basic considerations of rating a member of the police department for the purpose of promotion: the grade received by a member on a written competitive examination; the past performance record of a member as a member of the police department; the rights acquired by the length of service or tenure; Provide, that the grade received on the written competitive examination shall be considered as fifty percent (50%) of the rating; the past performance record shall be considered as forty percent (40%) of the rating; the seniority rights based on the number of years of service as a member of the police department at the rate of one-half of one percent (1/2%) for each year of service shall be considered as ten percent (10%) of the rating; Provided further that the name or any means of identification of any member taking the competitive or qualifying examination under the provision of this chapter (19-1-29.51 – 19-1-29.5-29) shall be withheld and made unavailable to the person or persons who grade such examinations and all written competitive examinations shall be treated and filed as confidential; provided further, that said examination papers shall be made a part of the permanent file of the individual officer taking the examination and they shall be retained in the chief's office or police

headquarters and shall be maintained under the supervision of the chief of police and the individual officer shall have access to this file to examine same at any time. The chief of the police department shall notify each member, in writing, of the grade which such member received on the examination. Such rules and regulations shall further provide that if any member is aggrieved with the grade received on the written competitive examination he shall have the right to appeal in writing to the commission for a review of the grade within then (10) days after the notice of the grade has been sent to him, and the commission, after reviewing the grade and examination papers, shall have the authority to affirm the grade or to correct the grade according to the findings of the review.

- (3) To prescribe the manner of determining a rating for the past performance; provided, that such rules and regulations shall contain a provision requiring that performance rating shall be made every six (6) months for each member of the police department by a superior officer, as designated by the commission, which ratings shall be submitted to the chief of the police department and kept on file in his/her office or in police headquarters under his/her supervision. The chief of the police department shall notify each member, in writing, of the rating which such member received. Such rules and regulations shall further provide that if any member is aggrieved with the performance rating given to him by his/her superior officer he shall have the right to appeal to the commission for a review of the rating within then (10) days after the notice of the rating has been sent to him; and the commission, after reviewing the rating, shall have the authority to affirm the rating or to correct the same.

I.C. 19-1-29.5-8
(*Terre Haute*
Rev. 2015)

Promotion Probation period – Evaluation – Review – Appeal. All promotions provided for herein shall be probationary for the first year. At the end of such year, the superior officer shall review the performance of the probationary officer and recommend to the commission whether the promotion shall be made permanent, whether the probationary period should be extended for an additional period not to exceed six (6) months, or whether the promotion should be revoked. The commission shall prepare an appropriate rating chart for the superior officer's use in making his/her report. The commission shall review the report and make its determination as to the disposition to be made. The probationary officer may appear before the commission and be heard on any matter detrimental to him in the superior officer's report. He shall have the right to be represented by counsel. Any action of the commission, other than the making of the promotion permanent may be appealed to the circuit or superior court of the county. In the event the promotion is finally revoked the officer shall not be returned to a rank

lower than he held prior to the time of the probationary promotion. The commission shall prepare and publish appeal procedures to be followed for appeals to the commission from the report of the superior officer. Appeals to a court shall be de novo and the appellant may submit new and additional evidence.

I.C. 19-1-29.5-9
(*Terre Haute*
Rev. 2015)

Initial Promotions made from any rank – Exceptions. Initially, upon the effective date (July 1, 1972) of this chapter, the promotion to any rank, except that of chief of police, and assistant chief of police, shall be open to any member of the department who has passed the competitive examination: Provided, That any such member shall have had two (2) years of service in the department at the time of promotion to the ranks of detective or corporal; five (5) years service at the time of promotion to sergeant; seven (7) years service at the time of promotion to the rank of lieutenant; nine (9) years service at the time of promotion to the rank of captain; and twelve (12) years service at the time of promotion to the rank of inspector.

I.C. 19-1-29.5-10
(*Terre Haute*
Rev. 2015)

Promotion from next immediate lower rank – Time-in-service requirements for rank – Acting rank – Rules and Regulations furnished to Police Officers. Thereafter, all promotions to any rank shall be from the next immediate lower rank and Provided that the person to be promoted shall have qualified in time of service required by this chapter (19-1-29.5-1 – 19-1-29.5-20): Provided, further, that rank of detective and corporal shall be considered as equal rank, but shall not be considered as a required rank before taking a written competitive test for the rank of sergeant; that to be qualified in time of service herein, a member of the police department shall have been a patrolman for a minimum of two (2) years before he shall be eligible for the rank of detective or corporal; that a patrolman, detective or corporal shall have been a member of the police department for a period of not less than five (5) years before he shall be eligible for the rank of sergeant; that a sergeant shall have been a member of the police department for a period of not less than seven (7) years before he shall be eligible for the rank of lieutenant; that a lieutenant shall have been a member of the police department for a period of not less than nine (9) years before he shall be eligible for the rank of captain; and that a captain shall have been a member of the police department for a period of not less than twelve (12) years before he shall be eligible for the rank of inspector. Provided, further, that no acting rank shall exceed ninety (90) days; except where an acting rank is created to fill a vacancy because of the illness or military leave of an officer who holds permanent rank or by a vacancy in rank which must be held open because of appointment from such rank to the rank of chief or assistant chief of police.

In any event any acting rank shall be filled from the existing eligibility list for such rank to be filled.

Such rules and regulations shall be printed and a copy of said rules and regulations shall be furnished each member of said police department. Any amendments to these rules and regulations shall be printed and furnished to all members of said police department.

I.C. 19-1-29.5-11
(*Terre Haute*
Rev. 2015)

Promotional Schools – Grading of Graduates – Eligibility Lists – Schools held Biennially. There shall be a promotional school conducted by the commission and written competitive examinations given for the purpose of filling any existing vacancies in the ranks that may occur from time to time. Any member of said police department shall have the right to attend such promotional school: Provided, however, that only those members who are qualified in rank and length of service as by this chapter (19.1-29.5-1 – 19.1-29.5-29) shall be given a written final examination covering topics taught in the school and placed on the eligibility list by the grade received.

The eligibility list shall be maintained for a period of two (2) years, at which time there shall be another promotional school, for the purpose of establishing a new eligibility list, conducted by the commission, and a promotional school conducted by the commission every two (2) years thereafter.

I.C. 19-1-29.5-12
(*Terre Haute*
Rev. 2015)

Outside Instructors – Materials – Equipment. The commission may employ instructors who are not members of the police department of such city and the commission is authorized to purchase materials and equipment and allow other necessary expenditures for the purpose of instructing applicants and members of the police department.

*
I.C. 19-1-29.5-13
(*Terre Haute*
Rev. 2015)

I.C. 19-1-29.5-13 Authority for Appointment or Removal of Police Officers - Removal of Chief or Assistant Chief – Rank of Chief and Assistant After Term.

The commission shall have the power and authority to appoint or remove any member of the police department, but the mayor of such city shall have the sole power of appointing and removing any member of the department as chief of police and assistant chief of

police of the department in accordance with the law pertaining to such cities: Provided that an applicant for appointment as police chief or assistant chief must have at least five (5) years of continuous service with the police department of that city immediately before the appointment, and remain compliant with applicable age requirements for employment, and that the removal of any member of the police department as chief or assistant chief of said department shall be deemed as removal from rank only, and not from the police department: Provided further, That the office of superintendent of police and the office of chief of police shall be considered as one and the same office. Provided further, That upon expiration of the term of any chief of police and assistant chief of police department in any city, such person shall be appointed by the commission to the rank in the police department which he held at the time of his appointment as chief or assistant chief of the department, Provided, That in the event (of) the chief or assistant chief of the department during his/her tenure of office has qualified in accordance with the promotional procedure as prescribed by the commission in its rules and regulations for any rank in the police department which is higher than the rank which he held at the time of his/her appointment as chief or assistant chief of the department, he shall, upon expiration of his/her term as chief, be appointed by the commission to the rank for which he has qualified under the promotion procedure.

I.C. 19-1-29.5-14
(*Terre Haute*
Rev. 2015)

I.C. 19-1-29.5-14 Qualifications of Applicants.

- (a) To be appointed to the department, an applicant must be:
- (1) a citizen of the United States;
 - (2) a high school graduate or equivalent; and
 - (3) at least twenty-one (21) years of age, but under thirty-six (36) years of age.

Provided, That the age requirement shall not apply to those members of the police department who have been previously employed in said department.

I.C. 19-1-29.5-15
(*Terre Haute*
Rev. 2015)

Convicted Felon Ineligible. An applicant for an appointment, reappointment or reinstatement shall be ineligible if he has been found guilty of a felony in any court without the same having been reversed by a court of appeals.

I.C. 19-1-29.5-16
(*Terre Haute*
Rev. 2015)

Applications – Filing – Evidence of Birth – Eligibility for Pension Fund Required.

All applications for an appointment, reappointment or reinstatement to such department are required to be filed with the commission and accompanying said application shall be a duly authenticated birth certificate of the applicant, or the applicant shall produce satisfactory evidence of the date and place of his/her birth. The applicant is further required to file with said application a certificate from a physician appointed by the board of trustees of the police pension fund for such city, certifying that the applicant is eligible for pension benefits.

I.C. 19-1-29.5-17
(*Terre Haute*
Rev. 2015)

Preliminary Physical Examination Required.

All applicants for appointment, reappointment or reinstatement to the police department shall be required to pass a preliminary examination for the purpose of determining their physical condition and general aptitude for service as a police officer. This preliminary examination shall be conducted in the manner and form as may be provided in the rules and regulations adopted by the commission. The examination to determine the physical condition (agility) of a candidate shall not discriminate on the basis of sex. Upon the conclusion of such preliminary examination, the results thereof shall be reduced to writing and filed of record with the commission. If the commission shall find from such preliminary examination that the applicant does not possess the qualifications which in the opinion of the commission fit the applicant for appointment, reappointment, or reinstatement, the applicant shall be rejected by the commission.

I.C. 19-1-29.5-18
(*Terre Haute*
Rev. 2015)

I.C. 19-1-29.5-18 regarding Policemen's Schools is stricken in its entirety.

I.C. 19-1-29.5-19
(*Terre Haute*
Rev. 2015)

Grading for Appointment, Reappointment or Reinstatement.

The applicants shall then be rated on the selection criteria and testing

The applicants shall then be rated on the selection criteria and testing methods adopted by the commission, which may include mental alertness, character, habits, and reputation. The commission shall adopt rules for grading the applicants, including the establishment of a passing score. The commission shall place the name of applicants with passing scores on an eligibility list by the order of their scores and shall certify the list to the safety board.

I.C. 19-1-29.5-20
(*Terre Haute*
Rev. 2018)

Duration of Eligible List – Eligible Age Limit.

If an applicant for original appointment reaches his thirty-sixth birthday, his/her name shall be removed from the eligibility list. Applicants remain on the list for one (1) year from the date of certification. After one (1) year a person may reapply as an applicant.

I.C. 19-1-29.5-21
(*Terre Haute*
Rev. 2015)

Vacancies Filled from eligible List – Physical Condition - Character.

Whenever a vacancy occurs in the police department, the commission upon written request of the chief of such department, shall appoint the person having the highest grade on the eligible list of that particular department to fill such vacancy; the person appointed shall be enrolled as a member of such police department: Provided, however, that before such person is enrolled as a member of such department he shall be required to pass such physical examination as may now or hereafter be required by law or required by pension fund law, and he must still be of good character.

I.C. 19-1-29.5-22
(*Terre Haute*
Rev. 2015)

Initial Probationary Period.

All appointments are probationary for a period not to exceed one (1) year. If the commission finds, upon the recommendation of the department during the probationary period, that the conduct or capacity of the probationary member is not satisfactory, the commission shall notify him/her in writing that he/she is being reprimanded, that he/she is being suspended, or that he/she will not receive a permanent appointment. If a member is notified that he/she will not receive a permanent appointment, his/her employment immediately ceases. Otherwise, at the expiration of the probationary period the member is considered regularly employed.

I.C. 19-1-29.5-23
(Terre Haute
Rev. 2015)

Solicitation of Favor for Appointment Renders Applicant Ineligible.
Any applicant who personally or through any other person solicits any member of the commission to favor his/her appointment or reinstatement to such force, shall be thereby rendered ineligible for all time to any such appointment to the police department.

I.C. 19-1-29.5-24
(Terre Haute
Rev. 2015)

19-1-29.5-24. Dismissals, Suspensions and Punishments.

Dismissals, suspensions for more than ten (10) days and punishments of members of the police department shall be by the commission and shall be for the causes, except as herein otherwise provided, and under the same rules of procedure including the right of appeal as are now or may hereafter be provided by laws pertaining to a municipality of the size of the City of Terre Haute, including I.C. 36-8-3.5-17.

I.C. 19-1-29.5-25
(Terre Haute
Rev. 2015)

Retirement Age. Upon arriving at the age of sixty-five (65), it shall be mandatory for a member of the police department to retire from said department, Providing, however, that any member of the police department that is of the age of sixty-five (65) or over at the time of the taking effect of this chapter (July 1, 1972) shall be permitted to serve to end of the calendar year.

I.C. 19-1-29.5-26
(Terre Haute
Rev. 2015)

19-1-29.5-26. Reprimands and Suspensions by Chief - Notice to Commission - Dismissals, Suspensions, and Punishments by Commission.

The Chief of Police may impose reprimands and suspensions from duty without pay for a period not exceeding ten (10) days. If such action is taken by the Chief of Police, such Chief shall within forty-eight (48) hours thereafter notify the Commission in writing of such action. An officer which is the subject of a suspension from duty without pay for a period not exceeding ten (10) days may request an appeal of such suspension by the Commission, which request must be in compliance with all requirements of the Manual of Rules of the Terre Haute Police Department Merit Commission. A decision to consider a requested

Suspensions and punishments greater than a suspension without pay exceeding ten (10) days shall be for cause in accordance with the provisions of this chapter, as amended.

I.C. 19-1-29.5-27
(*Terre Haute*
Rev. 2015)

Reduction in Force – Temporary Leave without pay – Reinstatement – Physical Examination. If, after the taking effect of this chapter (July 1, 1972) and for reasons of economy, it shall be deemed necessary by the common council or the board of any such city, to reduce the number of police officers of the police department, then such reduction shall be made by granting temporary leave of absence without pay or financial obligation to such city, to the last person or persons, including probationers, that have been appointed to such department in numerical order, commencing with the last person appointed and continuing in such order until desired reduction is effected. In the event that the department affected by such reduction shall again be increased in number, the members of such department, who have been granted such leave of absence without pay, under the terms of this section, shall be reinstated before any person on the eligible list is appointed to such department. Said reinstatements shall commence with the last person granted a leave without pay. Provided, however, that such former member, who shall have been granted leave of absence as in this section provided, shall be reinstated upon passing only a physical examination, satisfactory to the commission and the trustees of the pension fund of such department, anything in this chapter to the contrary notwithstanding.

I.C. 19-1-29.5-28
(*Terre Haute*
Rev. 2015)

Existing Members and Rank Retained Temporarily – Examinations to Determine Permanent Rank. All persons who are members of any police department of any such city of the second class at the time of the effective date (July 1, 1972) of this chapter shall hold their respective ranks temporarily. The commission members shall, within a reasonable time not to exceed six (6) months after their appointment, hold open competitive examinations for all members of the police department for the purpose of determining whether or not the person so examined shall either retain his/her rank, be reduced in rank, or advanced in rank.

I.C. 19-1-29.5-29
(*Terre Haute*
Rev. 2015)

Funds for Necessary Commission Expenses. From the time such cities of second class commence operating under the provisions of this chapter (19-1-29.5-1 – 19-1-29.5-29) to the end of the current fiscal year, there shall be

paid out of the general fund of such cities, on claims properly filed, all the necessary expenses of said commission, including salaries and operating costs.

Sec. 6-16 through Sec. 6-19 Reserved for Future Use.

Division III. Powers and Duties of the Police Department.

Sec. 6-20 Role of the Board of Public Works and Safety.

a. The Police Department is under the jurisdiction of the Board of Public Works and Safety as addressed in Sec. 2-29 of this *Terre Haute City Code*.

b. The Merit Commission shall have jurisdiction on such issues as discipline, demotion, and dismissal of the Police Department matters pursuant to *I.C.* § 36-8-3-4.

Sec. 6-21 Powers and Duties of Police Officers.

a. Sworn members of the Terre Haute Police Department shall have the powers and duties set forth in *I.C.* § 36-8-3-6 and *I.C.* § 36-8-3-10, *et seq.*

b. Sworn members shall conduct themselves pursuant to the Department's Duty Manual and all General and Special Orders issued by the Chief of Police.

Sec. 6-22 Police Reserve Unit.

There is hereby created a police reserve unit which shall be known and designated as the Police Reserve Unit of the City of Terre Haute and hereinafter referred to as "the Unit."

a. The Unit shall consist of no more than twenty percent (20%) of the number of budgeted officers, each of whom shall be subject to the same physical, mental, age and residential requirements as members of the regularly constituted police department of the said City.

b. Members of the Unit shall be appointed by the Police Merit Commission for the City of Terre Haute (Board) and shall serve at the pleasure of that Board. Any reserve police officer may at any time, with or without cause and with or without a hearing, be discharged by the Board.

c. To the extent that funds for the following are appropriated, members of the Unit may receive a uniform allowance, receive compensation for time lost from other employment because of court appearances, and be insured for life, accident and sickness coverage. This shall not imply any duty by the City to appropriate any funds for the above.

d. The members of the Unit, upon the completion of required training and maintenance of qualifications required for all members of the regularly constituted police department, shall have the same police powers as members of the regularly constituted police department of the City; provided however, that the members of the Unit shall have such powers only when on duty pursuant to the call of the Chief of Police. The call may be either by arrangement of normal duty hours which may be assigned by the Chief of Police or by the activation of the Unit or any member thereof by the Chief of Police in an emergency.

e. The Chief of Police shall determine the program for training members of the Unit. Final implementation of the Unit is predicated on the final approval of the City Council.

f. Members of the Unit may not participate in the Police Pension Fund. Members of the Unit shall be provided medical treatment and burial expenses under the workers' compensation law, *I.C.* §§ 22-3-2 through *I.C.* 22-3-6, as provided therein.

g. Promptly after being appointed and prior to taking the oath of office, each member of the Unit shall execute and deliver to the Controller of the City an instrument in a form approved by the City Attorney releasing the City from all liability for any injury to or death of the member in the line of duty as a member of the Unit. (Gen. Ord. No. 14, 2000, 6-8-00)

Sec. 6-23 Police Employment Policies.

Residency requirements, use of departmental vehicles, uniform and equipment allowances, care of injured police officers, promotion, work hours, and probationary appointments shall be governed by *I.C.* § 36-8-4-1, *et seq.*

Sec. 6-24 Police Leaves of Absence.

I.C. § 36-8-5-1, *et seq.*, shall govern leaves of absence.

Sec. 6-25 Police Pension Funds.

I.C. § 36-8-6-1, *et seq.*, address the 1925 Police Pension Fund and *I.C.* § 36-8-8-1 addresses the 1977 Police Officers' Pension and Disability Fund.

Sec. 6-26 through Sec. 6-34 Reserved for Future Use.

ARTICLE 3. FIRE DEPARTMENT.

Division I. In General.

Sec. 6-35 Fire Department.

As addressed in Sec. 2-48 of this *Terre Haute City Code*, the Fire Department is an Executive Department of the City.

Sec. 6-36 Role of Board of Public Works and Safety.

a. The Fire Department is under the jurisdiction of the Board of Public Works and Safety as addressed in Sec. 2-29 of this *Terre Haute City Code*.

b. The Board shall have jurisdiction on such issues as discipline, demotion, and dismissal of Fire Department members pursuant to *I.C. § 36-8-34*.

Sec. 6-37 Employment Standards for Firefighters and Standard Operating Procedures (SOP).

a. *I.C. § 36-8-3.2-1, et seq.*, shall govern employment standards for firefighters.

b. The Department's Standard Operation Procedures (SOP) shall govern all of the day-to-day activities of the Department.

Sec. 6-38 Firefighters' Employment Policies.

Residency requirements, use of departmental vehicles, uniform and equipment allowances, care of injured firefighters, promotion, work hours, and probationary appointments shall be governed by *I.C. § 36-8-4-1, et seq.*

Sec. 6-39 Firefighters' Pension Funds.

I.C. § 36-8-7-1 et seq., address the 1937 Firefighters' Pension Fund, and *I.C. 1 36-8-8-1, et seq.*, address the 1977 Firefighters' Pension and Disability Fund.

Sec. 6-40 Preserving Fire Station No. 9.¹¹⁰

The Board of Public Works and Safety is mandated to continue to assume responsibility of maintaining the building, utilities, and insurance, and to permit the Retired Policemen and Firemen Association of Terre Haute, Indiana, to use on loan any and all materials and equipment of the Police and Fire Departments that are considered to be surplus or of no value for displaying the same for the citizens of Terre Haute and in all other respects shall be used as a fire station when the protection of the citizens so demands. (Special Ord. No. 11, 1980, 3-13-80, *Journal of Common Council*, pp. 60-61)

Sec. 6-41 Protecting Certain Historical Fire Apparatuses.¹¹¹

¹¹⁰ Editor's Note: The Common Council of the City of Terre Haute, Vigo County, Indiana deemed that Fire Station No. 9, located on lots 32 and 33 in Idaho Place has certain intrinsic value as a historical site as well as an auxiliary fire house and should be maintain as such for the well being and protection of the citizens of this City. It voted that it is desirous of operating and maintaining the Old Fire Station No. 9 with the assistance of the Retired Policemen and Firemen Association, Chapter 8, Terre Haute, Indiana.

¹¹¹ Editor's Note: The Council noted that the Fire Department of the City of Terre Haute, Indiana has had in its

The Board of Public Works and Safety is mandated to provide adequate inside storage and protection for the 1910 Oldsmobile Fire Apparatus and 1918-1947 International KB7 Fire Apparatuses and to prevent any destruction of these apparatuses, to retain at all times the title and ownership of the aforesaid Fire Apparatus and to permit the Firefighters Local 758 Organization to maintain said Apparatus. (Special Ord. No. 70, 1974, 12-12-74, *Journal of Common Council*, pp. 392-393)

Sec. 6-42 through Sec. 6-47 Reserved for Future Use.

Division II. Specific Fire Safety Regulations.

Sec. 6-48 Fire Prevention Code.

The City of Terre Haute has adopted a Fire Prevention Code which is set forth in Chapter 7 of this *Terre Haute City Code*.

Sec. 6-49 False Fire Alarms.

a. It shall be unlawful for any person or persons, knowingly or with the intent to deceive, to give or cause to be given a False Alarm of Fire, audibly, or by means or use of the Fire Alarm Telegraph System of the City of Terre Haute, or by means or use of the Telephone or Telegraph Systems, or by the use of any other means or appliances. (Gen. Ord. No. 12, 1936, § 1, 10-2-36, *Journal of Common Council*, pp. 307-308)

b. Anyone violating this Section shall be fined any sum not to exceed One Hundred Dollars (\$100.00). (Gen. Ord. No. 12, 1936, § 2, 10-2-36, *Journal of Common Council*, pp. 307-308)

Sec. 6-50 Smoke Detectors Required in Rental Properties.¹¹²

a. No person shall rent or lease any room, apartment, or house to another for occupancy, which occupancy exceeds thirty (30) days, except in compliance with the provisions of this Division. (Gen. Ord. No. 1, 1985, § 1, 9-12-85)

b. Any person who rents or leases any room, apartment, or house to another for occupancy which occupancy exceeds thirty (30) days, shall provide such tenant smoke detectors approved by a testing agency approved by the Consumer Product Safety Commission, which smoke detectors shall be in good working order and installed outside of each separate sleeping

possession since their purchase two (2) pieces of Fire Apparatus, namely; a 1910 Oldsmobile Fire Apparatus, which was the first motorized Fire Apparatus on the Fire Department and the first to go into service in the State of Indiana, and a 1918-1947 International Fire Apparatus, which was the first fire apparatus made in the fire engine repair shop by the Terre Haute Fire Department; and these two (2) apparatus are unique and are of considerable historical value for present and future generations and should be protected by the City.

¹¹² Editor's Note: Gen. Ord. No. 1, 1985, became effective on July 1, 1986, pursuant to § 5 of that ordinance.

area in the immediate vicinity of the bedrooms and on each additional story of the family unit including basements and excluding crawl spaces and unfinished attics. (Gen. Ord. No. 1, 1985, § 2, 9-12-85)

If said smoke detectors require an AC power supply, such power supply shall be from a circuit not used for any other purpose; and there shall not be a switch or switching device in this circuit, other than a fuse or circuit breaker at the main power supply.

c. Prior to occupancy of any such room, apartment, or house, the owner of said property shall obtain a signed receipt in duplicate, from the tenant showing compliance with this Division. The original signed receipt shall be retained by the owner and the duplicate shall be given to the tenant. (Gen. Ord. No. 1, 1985, § 3, 9-12-85)

d. It is the responsibility of the tenant to maintain all such smoke detectors provided by the owner in good working order until said tenant vacates the premises unless said smoke detector requires AC power supply, then the responsibility for maintaining such smoke detector shall be the responsibility of the owner of the property. (Gen. Ord. No. 1, 1985, § 4, 9-12-85)

Sec. 6-51 Smoking on City Buses Prohibited.

a. Many patrons have notified the Bus Department that they find smoking on buses offensive and the Terre Haute Bus Department believes if smoking is prohibited on buses it will increase the number of passengers who ride city buses. Smoking presents a potential hazard and there is considerable damage done to city buses due to smoking on buses. (Special Ord. No. 84, 1980, § 1, 12-11-80, *Journal of Common Council*, pp. 466-467)

b. *Penalty.* Any person violating this Division shall be fined not more than Three Hundred Dollars (\$300.00). Each continued violation shall constitute a separate offense. (Special Ord. No. 84, 1980, § 2, 12-11-80, *Journal of Common Council*, pp. 466-467)

c. Smoking is prohibited on City Buses, and to accomplish this objective the Terre Haute Bus Department shall post **NO SMOKING** signs in all City Buses of the City of Terre Haute. (Special Ord. No. 84, 1980, § 3, 12-11-80, *Journal of Common Council*, pp. 466-467)

Sec. 6-52 City Hall Designated as Smoke-Free Facility.

City Hall is designated as a smoke-free facility. Violators shall be issued a citation and be subject to a fine of Twenty Five Dollars (\$25.00). (See also § 2-140 of this *Code*.) (Gen. Ord. No. 10, 1999, 12-9-99)

Sec. 6-53 Prohibition on Use of Pyrotechnic Displays in Buildings.

a. Pyrotechnic displays used within enclosed buildings pose a threat and danger to the health, safety and welfare of the citizens of the City of Terre Haute.

b. It shall be a violation of this Division for any person, owner, occupant, lessee, or tenant to use pyrotechnic displays in any building within the City of Terre Haute, without prior approval by the State Fire Marshal and Terre Haute Fire Department.

c. *Penalty.* Any person violating this Section shall be fined not more than Three Hundred Dollars (\$300.00). Each event of violation shall constitute a separate offense. (Gen. Ord. No. 12, 2003, 4-10-03)

Sec. 6-54 Open Burning Regulations.

a. It is a violation to kindle or maintain any bonfire or authorize any such bonfire to be started, kindled, caused, allowed or maintained within the City without a permit from the Terre Haute Fire Department. The permit shall be submitted to the Terre Haute Fire Department. The fee for such permit shall be Forty Dollars (\$40.00). Fees collected shall be deposited into a Fire Department Non-Reverting Contractual Firefighting/Emergency Response Services Fund. Such permit shall only be issued if:

1. Bonfire is constructed and maintained for the purpose of a ceremonial fire, school pep rally, scouting activity, or other similar not-for-profit activity;

2. Only clean untreated wood or charcoal shall be used. Paper or petroleum products can be used for ignition purposes only;

3. The fire shall not be ignited more than two (2) hours before the recreational activity is to take place and shall be extinguished upon the conclusion of the activity;

4. The pile to be burned shall be less than one thousand (1,000) cubic feet;

5. Bonfire shall not be constructed within fifty feet (50') of a structure or other combustible material;

6. Bonfire must be controlled and attended by owner or responsible party of the property on which the bonfire is constructed; and

7. The Terre Haute Fire Department shall be notified twenty-four (24) hours prior to scheduled event;

8. A Terre Haute Fire Department engine must be present during the burning.

b. An outdoor fire other than bonfires as explained in subsection (a) is permissible in the following circumstances:

1. The fire shall not be more than three feet (3') in diameter and three feet (3') high;

2. Fire shall consist of dry, seasoned firewood ignited by kindle only. Flammable liquids or accelerants shall not be used to ignite said fire;

3. Prohibited materials include, but are not limited to: rubber, plastic, chemically treated materials, or other materials that produce excessive or noxious smoke. Items that may not be burned include: hazardous materials, demolition debris, metal, building materials, garbage, refuse, waste materials, rubbish, leaves, or any prohibited materials;

4. The burn area is surrounded by a solid stone retention wall no less than one foot (1') in height or the burn area is suspended at least one foot (1') above ground;

5. There must be an area within five feet (5') of the fire's base cleared of combustible materials;

6. The burn area is not within twenty feet (20') of any structure, property line, vehicle or right of way;

7. Fire shall be constantly attended by someone over the age of eighteen (18) with a readily available means of extinguishment;

8. Fire shall be limited to single family and two-family dwellings;

9. Fire shall be located in the rear yard of the principal structure;

10. Sustained winds are below five (5) miles per hour and no drought warning is in effect;

11. Sustained burning does not occur for a period exceeding two (2) hours.

d. If a fire creates an air pollution problem, a nuisance to neighbors, or a fire hazard, it shall be promptly extinguished upon request by any City official.

e. If any governmental entity issues a burn ban, for any reason, no outdoor fires for cooking purposes shall be permitted.

f. Nothing in this Section allows the burning of trash, garbage, refuse, waste materials or substances, and leaves as prohibited by Sec. 6-101.

g. It shall be the duty of the Terre Haute Police Department to enforce violations of this Section.

h. For any person violating the provisions of this Section, the penalty for the first offense in any twelve (12) month period shall be as provided by the Ordinance Violation Bureau (See § 1-11 of this *Code*). All subsequent offenses in any twelve (12) month period are subject to enforcement through the judicial system as provided by State statute and local ordinance. (Gen. Ord. No. 5, 2016, 5-12-16)

ARTICLE 4. ANIMAL REGULATIONS.

Division I. Baby Chicks, Rabbits, Ducklings and Other Fowl Regulations.

Sec. 6-60 Selling and Bartering of Baby Chicks Restricted.

It shall be unlawful for any person, firm, or corporation to sell, or offer for sale, barter, or give away living baby chicks, rabbits, ducklings or other fowl under two (2) months of age in any quantity less than six (6). (Special Ord. No. 5, 1961, § 1, 2-21-61, *Journal of Common Council*, pp. 24-25)

Sec. 6-61 Artificial Coloring Prohibited.

It shall be unlawful for any person, firm, or corporation, to sell, or offer for sale, barter, or give away, or display living baby chicks, rabbits, ducklings, or other fowl which have been dyed, colored, or otherwise treated so as to impart to them an artificial color. (Special Ord. No. 5, 1961, § 2, 2-21-61, *Journal of Common Council*, pp. 24-25)

Sec. 6-62 Business Not Affected.

This Division shall not be construed to prohibit the sale or display of natural baby chicks, rabbits, ducklings or other fowl in proper brooder facilities by hatcheries or stores engaged in the business of selling them for commercial purposes. (Special Ord. No. 5, 1961, § 3, 2-21-61, *Journal of Common Council*, pp. 24-25)

Sec. 6-63 Penalties.

Any person, firm, or corporation violating any of the provisions of this Division shall be subject to a fine not exceeding the sum of One Hundred Dollars (\$100.00). (Special Ord. No. 5, 1961, § 4, 2-21-61, *Journal of Common Council*, pp. 24-25)

Sec. 6-64 through Sec. 6-67 Reserved for Future Use.

Division II. Animal Control Regulations.

Sec. 6-68 Purpose.

It is the purpose of this Division to regulate licensing and animal control standards, encourage the spaying/neutering of pets to minimize potential for pet overpopulation, and to establish an Animal Control Commission to oversee the enactment and enforcement of this Division.

The terms and provisions of this Division shall not apply to any publicly or privately owned zoological park or other facility that is licensed or registered prior to the enactment of this Division, and which remains so licensed or registered by the United States Department of Agriculture under the Federal Animal Welfare Act of 1970, 7 U.S.C. 2131, *et seq.*, As Amended. (Gen. Ord. No. 25, 2001, As Amended, 3-14-02)

Sec. 6-69 Definitions.

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

- a. **Altered Animal.** Any animal, which has been spayed or neutered.
- b. **Animal.** Any live nonhuman vertebrate animal (domestic or wild).
- c. **Animal Control Commission.** The advisory commission with regard to policy and fiscal decisions affecting the terms and enforcement of this Division.
- d. **Animal Control Officer.** The animal control division of the Terre Haute Police Department and any other division or employee designated as Animal Control Officer by the Board of Public Works and Safety.
- e. **At Large.** An animal that is not under restraint.
- f. **Animal Welfare Organization.** Any not-for-profit organization for the prevention of cruelty to animals incorporated under state laws.
- g. **Animal Shelter.** Any facility operated by a humane society or municipal agency, or its authorized agents, for the purpose of impounding or caring for animals held under the authority of this Division or State statute.
- h. **Attack.** An unprovoked attack in an aggressive manner on a human that includes a bite or causes a scratch, abrasion or bruising, or on a domestic animal, that causes death or injury that requires veterinary treatment.
- i. **Auction.** Any place or facility where animals are regularly bought, sold, or traded, except for those facilities otherwise defined in this Division.
- j. **Breeder.** Any person who intentionally or unintentionally causes the breeding of any cat or dog, makes any cat or dog available for breeding, or offers for sale, sells, trades, receives any compensation, or gives away any cats or dogs. (Gen. Ord. No. 11, 2009, As Amended, 9-11-09)
- (k) **Colony.** A group of one (1) or more free-roaming cats, whether unmanaged or managed. (Gen. Ord. No. 11, 2009, As Amended, 9-11-09)
- (l) **Colony Caretaker.** A person who provides food, water and shelter for free-roaming cats in a managed colony. (Gen. Ord. No. 11, 2009, As Amended, 9-11-09)

(m.) **Commercial Animal Establishment.** Any grooming shop, pet shop, auction, riding school or stable, zoological park, circus, animal exhibition or other business that engages in the breeding, care, sale or display of animals for profit. It does not include fish displayed or sold for profit.

(n.) **Companion Animal.** Any domestic or feral dog, domestic or feral cat, nonhuman primate, guinea pig, hamster, gerbil, chinchilla, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any animal under the care, custody, or ownership of a person or any animal that is bought, sold, traded, or bartered by any person. Agricultural animals, game species, or any animals regulated under federal law as research animals shall not be considered companion animals for the purposes of this Division. (Gen. Ord. No. 11, 2009, As Amended, 9-11-09)

(o.) **Dangerous Dog.** Any dog which, when unprovoked, commits in an aggressive manner an attack on any person, or domesticated animal. (Gen. Ord. No. 11, 2009, As Amended, 9-11-09)

(p.) **Dog-Fighting, Baiting.**

(q.) **Domestic Animal.** Any animal that is a member of one of the following species:

Dog (*Canis familiaris*)
Cat (*Felis catus* or *Felis domesticus*)
Cattle (*Bos domesticus* or *Bos taurus* or *Bos indicus*)
Horse (*Equus caballus*)
Donkey (*Equus asinus*)
Pig/Swine (*Sus Scrofa*)
Sheep (*Ovis aries*)
Goat (*Capra hircus*)
Rabbit (*Oryctolagus cuniculus*)
Mouse (*Mus musculus*)
Rat (*Rattus rattus*)
Reptile (*Reptilis*) as defined herein
Guinea pig (*Cavia porcellus*)
Chinchilla (*Chinchilla laniger*)
Hamster (*Mesocricetus auratus*)
Gerbil (*Gerbillus gerbillus*)
Ferret (*Mustela putorius furo*)

I **Feral.** A companion animal, dog or cat, who is unsocialized to humans, whose temperament is one of extreme fear, and who avoids contact with humans. (Gen. Ord. No. 11, 2009, As Amended, 9-11-09)

(s) **Fighting Dog.** A dog that is intentionally bred or trained to be used in, or that is actually used in, a dogfight. A dog does not constitute a fighting dog solely on account of its breed. (Gen. Ord. No. 11, 2009, As Amended, 9-11-09)

(t) **Free-roaming Cat.** Any homeless, stray, wild or untamed cat. (Gen. Ord. No. 11, 2009, As Amended, 9-11-09)

(u.) **Grooming Shop.** A commercial establishment where animals are bathed, clipped or otherwise groomed.

(v.) **Harboring.** The actions of any person that permits any animal habitually to remain or lodge or be fed within his home, store, enclosure, yard, or place of business or any premises on which such person resides or controls. Any animal shall be presumed harbored if it is fed or sheltered for five (5) business days. (Gen. Ord. No. 11, 2009, As Amended, 9-11-09)

(w.) **Humane Shelter/Humane Society.** Any organization existing for the purpose of the prevention of cruelty to animals and incorporated under the laws of Indiana.

(x.) **Kennel.** Anyone owning or harboring more than six (6) animals six (6) months of age or older.

(y.) **Kennel – Non-Commercial.** Anyone owning or harboring a total of more than six (6) dogs and/or cats six (6) months of age or older, all of which are altered, in which case the owner or harborer shall be deemed non-commercial and must purchase a non-commercial kennel license.

(z.) **Kennel – Commercial.** An establishment wherein any person, group of persons, partnerships or corporations engages in boarding, breeding, buying, keeping, letting for hire, training for a fee, grooming, or selling dogs and/or cats. A commercial license is required.

aa. **Managed Colony.** A colony of free-roaming cats that is registered with the animal care and control division or its designee and is maintained by a colony caretaker using trap, neuter, return methodology. (Gen. Ord. No. 11, 2009, As Amended, 9-11-09)

(bb.) **Microchip Implant.** A passive electronic device that is injected into an animal by means of a pre-packaged sterilized implanting device for purposes of identification and/or recovery of animals by their owners.

(cc.) **Microchip Reader.** An electronic device (passive transponder) that detects any implanted microchip.

(dd.) **Pet Shop.** Any retail establishment engaging in the purchase and/or sale of cats and dogs, either solely or in addition to the purchase and/or sale of any other species of animal excluding fish. Any person, group of persons, partnership or corporation, whether operated separately or in connection with another business enterprise, except a licensed cattery, kennel or breeder, that buys, sells or offers for sale any species of animal.

(ee.) **Ordinance Enforcement Authority.** Any person designated as officers by the City of Terre Haute for the primary enforcement of ordinances regulating animals and owners of animals.

(ff.) **Owner.** One who keeps, harbors or has custody, charge or control of an animal for a period of longer than five (5) business days. Those who temporarily keep animals, such as pet shops, veterinarians, kennels, shelters or stables shall not be deemed to be owners. (Gen. Ord. No. 11, 2009, As Amended, 9-11-09)

(gg.) **Pet.** Any animal kept for pleasure rather than utility owned or harbored by any person, group of persons, partnership or corporation. Exceptions: fish, guide or service dogs engaged in working or training to work for the assistance for hearing or sight impaired, or physically handicapped or disabled persons; or police or canine governmental dogs.

(hh.) **Public Nuisance.** Any animal or animals that:

- (1) Molest passersby or passing vehicles;
- (2) Attack or threaten other animals;
- (3) Damage public or private property;
- (4) Bark, whine, howl, or make other sounds common to its species in an annoying, excessive or continuous manner;
- (5) Are repeatedly “at large” or unrestrained; or
- (6) Constitute a nuisance due to odor deemed offensive.

(ii.) **Reptile.** Any air-breathing vertebrate of the class Reptilia, with the exception of:

- (1) Any reptile on the Federal Endangered or Threatened Species List or is on the Convention or International Trade in Endangered Species List, Appendix 1, As Amended;
- (2) Any venomous reptile, including front or rear-fanged reptiles;
- (3) Any python or a species which naturally exceeds twelve feet (12') in length;
- (4) All crocodylians, including alligators, caimans, and crocodiles;
- (5) Monitor lizards; and
- (6) Anacondas.

(jj.) **Research Laboratory.** Any animal research facility operated in compliance with the United States Department of Agriculture under the authority of the Federal Laboratory Animal Welfare Act, 7 *USCA* 2131, *et seq.*

(kk.) **Restraint.** The securing of an animal by a leash or lead or confining it within the real property limits of its owner.

(ll.) **Riding School/Stable.** Any place that has available for hire, boarding, and/or riding instruction, any horse, pony, donkey, mule or burro.

(mm.) **Stray.** Any animal that does not appear, after reasonable inquiry, to have an ascertainable owner.

(nn.) **Veterinary Hospital.** Any establishment maintained and operated by a veterinarian for surgery, diagnosis, and treatment of diseases and injuries of animals.

(oo.) **Vicious, Fierce or Dangerous Animal.** Any animal that by its behavior constitutes a serious physical threat to human beings or animals.

(pp.) **Wild Animal.** As defined by *I.C.* § 14-8-2-318, is an animal whose species generally lives in the wild or is not domesticated, with the exception of snakes.

(qq.) **Wildlife Rehabilitator.** Any individual or individuals that acquire the necessary state and federal permit to allow the rehabilitation of wildlife in their homes, on their property or in a professional facility, with the intent of releasing such animals according to state and federal guidelines.

(rr.) **Zoological Park.** Any facility, other than a pet shop or kennel, displaying or exhibiting, without the predominant purpose of selling, one or more species of undomesticated animals, operated by a person or a government agency. (Gen. Ord. No. 25, 2001, As Amended, 3-14-02; Gen. Ord. No. 11, 2009, As Amended, 9-11-09)

Sec. 6-70 Enforcement.

The provisions of this Division shall be enforced by the Board of Public Works and Safety of the City of Terre Haute and/or any ordinance enforcement authority. (Gen. Ord. No. 25, 2001, As Amended, 3-14-02)

Sec. 6-71 Pet Licensing Requirements, Wearing of Tags and Microchip Implants.

All owners residing within the corporate limits of the City of Terre Haute are required to license their dogs and cats as provided in this Division of the *Terre Haute City Code*.

a. Any person owning, keeping, harboring or having custody of any cat or dog over six (6) months of age must provide proof of spay/neuter when applying for city license. A person owning, keeping, harboring or having custody of any cat or dog may purchase an unaltered animal license in lieu of this requirement. No license shall be required of any animal welfare organization, municipal animal control facility or government agency, or certified guide/service dog. Consideration will be given with a health waiver from a veterinarian.

b. A durable tag stamped with number and year of issuance will be provided to pet license holders for each license granted. Dogs and cats must be microchipped or wear their permanent tag or tags (rabies, license, personal ID, microchip *if applicable*) at all times, except when involved in any organized show, obedience demonstration, training situation or under the care of a licensed veterinarian.

c. Any person owning any dog or cat may obtain, in addition to the animal's tags, a microchip implant for the dog or cat. In no case shall the microchip implant replace the requirement for the annual licensure of a dog or cat with the Board of Public Works and Safety.

d. Any person owning any dog or cat, which has been implanted with a microchip, shall keep the microchip registration up to date with the microchip company before a move, sale, trade, barter, gift or transfer of the animal. (Gen. Ord. No. 25, 2001, As Amended, 3-14-02; Gen. Ord. No. 11, 2009, As Amended, 9-11-09)

Sec. 6-72 Application for Pet License.

a. Application for pet licenses may be made at the Board of Public Works and Safety or its designated facility, or by mail, and shall include the name, address of applicant, type of license applied for, number and description of animal(s), proof of rabies vaccination, information regarding sterilization and appropriate fee. Persons applying for breeder licenses shall apply in advance of planned breeding.

b. Pet licenses are to be issued for a term of one (1) year, commencing with the date of issuance. Microchip implants do not preclude yearly licensure.

c. The Board of Public Works and Safety shall maintain records of the identifying license number. The ordinance and its officers shall have access to these records.

d. It shall be unlawful for any pet owner to fail to provide any dog or cat six (6) months of age or older with a current pet license as provided in this Section. The owner of any dog or cat must also have in his possession a current rabies vaccination tag showing that such animal has been vaccinated against rabies as otherwise provided in Sec. 6-89.3. No license shall be issued unless proof of vaccination against rabies is shown at the time of application for the license. Any owner of such animal who moves into the City for purposes of establishing a residence or residing, or who becomes a resident as a result of annexation shall have thirty (30) days in which to obtain the license required by this Division. (Gen. Ord. No. 25, 2001, As Amended, 3-14-02; Gen. Ord. No. 11, 2009, As Amended, 9-11-09)

Sec. 6-73 Identification.

a. A person who owns a dog or cat in the City shall ensure that each dog or cat owned by the person bears a permanent means of identification at all times, such that the owner of a lost or stolen dog or cat can be ascertained quickly and easily.

b. The means of identification required by this Section shall be in addition to any tags required to be worn by dogs or cats by State law or provision of this *Code*, and shall include either:

(1) A microchip implanted in the dog or cat which bears a registered identification number with tag on collar bearing company phone number, and which can be read by a standard microchip scanner; or

(2) A permanent tag attached to a durable collar worn at all times by the dog or cat, and bearing the owner's current name, address and telephone number.

(3) It shall be unlawful for a person to own a dog or cat six (6) months of age or older which is kept in the City, and which does not bear a permanent means of identification as provided in this Section. (Gen. Ord. No. 25, 2001, As Amended, 3-14-02; Gen. Ord. No. 11, 2009, As Amended, 9-11-09)

Sec. 6-74 Kennel Licenses.

a. Any person owning or harboring more than six (6) dogs or cats or any combination thereof totaling more than six (6), six (6) months of age or older must obtain a kennel license.

b. Any person engaging in boarding dogs or cats for compensation or maintaining a Commercial Animal Establishment as defined herein, must obtain a kennel license.

c. Any property to be used as a kennel site must be in compliance with the City zoning laws. (Gen. Ord. No. 25, 2001, As Amended, 3-14-02)

Sec. 6-75 Fees.

The following licenses are required and shall be issued upon payment of the stated fees and compliance with any other requirements herein:

a. Animal License.

Spayed or neutered cat or dog, per animal	\$ 5.00
Unaltered License	\$100.00

b. Kennel License.

With proper zoning	\$100.00
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(3) No fee shall be required of any veterinary hospital, excepting those that do grooming/and or boarding for a fee not connected to medical care or hospitalization; animal shelter; research laboratory or government operated zoological park.

(4) **Reclassification.** Any individual or business that has a change in class under which the commercial and/or non-commercial kennel license was issued shall report the change to the City and apply for a new license within thirty (30) days of any such change.

c. **Grooming Shop License.**

Fee \$ 25.00

(d.) **Pet Shop License.**

Fee \$100.00

(e.) **Commercial Animal Establishment Licenses.**

(1) Fee \$100.00

(2) Licenses are to be issued for a term of one (1) year, commencing with the date of issuance.

(3) Prior to engagements, license holders will furnish the Board of Public Works and Safety with a schedule of dates and times of exhibits or performances so the ordinance enforcement authorities can perform periodic inspections.

(f.) **Omnibus License.**

(1) Fee \$200.00

(2) This license shall allow the holder to operate a kennel, grooming shop, pet shop, and to be a breeder.

(3) The license holder does not need to obtain individual licenses in the aforementioned areas, but all requirements for each of the aforementioned licenses shall be met before the Omnibus License may be granted.

(4) All licenses will be issued after inspection and approval by ordinance enforcement authorities, provided all requirements of this Division are met.

(5) License holder must be in compliance with the City zoning laws.

(g.) **Miscellaneous Licenses.**

(1) Riding School \$150.00

(2) Stable \$150.00

(3) Animal Auction \$250.00

(4) Zoological Park \$250.00

(5) All license holders must be in compliance with City zoning laws.

(6) Exception: No fee shall be required of any animal shelter, research laboratory or government operated zoological park. (Gen. Ord. No. 25, 2001, As Amended, 3-14-02; Gen. Ord. No. 11, 2009, As Amended, 9-11-09)

Sec. 6-76 Appeal, Denial or Revocation of License.

a. Any person who is denied a license or whose license is revoked may seek reconsideration of the denial or revocation by the full Board of Public Works and Safety within ten (10) days of the date of the denial or revocation of the license.

b. All requests for appeals must be in writing and addressed to the Board of Public Works and Safety. The Board shall set the appeal for hearing within thirty (30) days of the receipt of the written request. (Gen. Ord. No. 25, 2001, As Amended, 3-14-02)

Sec. 6-77 Obtaining Kennel Licenses.

Applications for kennel licenses shall be made to the Board of Public Works and Safety. The application for a non-commercial kennel shall include the address of kennel, the name, address, and telephone number of the applicant as well as the description (species, breed, sex, age and coloration) of each animal housed in the kennel and a statement as to whether the applicant has ever been convicted of the offense of cruelty to animals.

If the applicant withholds or falsifies any information on the application, no license shall be issued and any license previously issued on false or withheld information shall be revoked. No person previously convicted of cruelty to animals, animal neglect or animal abandonment shall be issued a kennel license without prior review by the Board of Public Works and Safety and Animal Control Commission.

Applications for commercial kennel licenses must also contain a statement of the total capacity of the kennels.

If the proposed or existing site of a kennel is not located in an area zoned for kennels, the application shall be denied. (Gen. Ord. No. 25, 2001, As Amended, 3-14-02; Gen. Ord. No. 11, 2009, As Amended, 9-11-09)

Sec. 6-78 Inspection of Animals and Premises Authorized.

It shall be a condition to the issuance of any license required by this Division that the ordinance enforcement authorities of the City shall be permitted to inspect at any time the premises and all animals located thereon where such animals are harbored. (Gen. Ord. No. 25, 2001, As Amended, 3-14-02)

Sec. 6-79 Standards for Commercial Animal Establishments.

In order to be eligible to obtain a license, a commercial animal establishment must:

- a. Be operated in such a manner as not to constitute a public nuisance;
- b. Be in compliance with the City zoning laws;
- c. Provide an isolation area for animals which are sick or diseased to be sufficiently removed so as not to endanger the health of other animals;
- d. Keep all animals within a secure enclosure or under the control of the owner or operator at all times;
- e. With respect to all animals kept on the premises, comply with all of the provisions of this Division providing for the general care of animals;
- f. Not sell animals under eight (8) weeks of age or diseased;
- g. Provide the USDA Animal Dealer license number (if applicable) or the Commercial Animal Establishment, Pet Shop or Kennel or Breeder license number, or the individual dog/cat license number of the female dog/cat that produced the litter or individual animal; and
- h. All advertisements for the sale, adoption or free placement of these animals within the City must contain the license number whether Commercial Animal Establishment, Pet Shop, Kennel, breeder or individual dog/cat license number. (Gen. Ord. No. 25, 2001, As Amended, 3-14-02)
- i. Be in compliance with *I.C. 15-21*, provisions regulating commercial dog breeders. (Gen. Ord. No. 11, 2009, As Amended, 9-11-09)

Sec. 6-80 Commercial Animal Establishment License Period.

The Commercial Animal Establishment license period shall begin on January 1st and shall run for one (1) year. Applicants requiring a license during the year shall pay a prorated fee for the remaining portion of the year. Applications must be made at least ten (10) days before the opening of a Commercial Animal Establishment. (Gen. Ord. No. 25, 2001, As Amended, 3-14-02)

Sec. 6-81 Breeder Licenses.

- a. Any person who intentionally or unintentionally causes the breeding of any cat or dog, or allows any cat or dog available for breeding purposes,

b. Any person who offers for sale, sells, trades, receives other compensation for or gives away any cat or dog,

c. And such person shall:

(1) Be in compliance with the City zoning laws.

(2) Not allow the birthing of more than one (1) litter per animal per year; and

(3) Furnish the Board of Public Works and Safety with information on the birth of each litter of dogs or cats as may be required to register that litter of dogs or cats with the Board of Public Works and Safety, and to be assigned a litter number for each litter; and to use this litter number for all advertisements regarding sale, giveaway or relinquishment of animal(s); and

(4) Be required to register with the Board of Public Works and Safety the name, address, and telephone number of each buyer or new owner of any dog or cat sold or transferred within five (5) days after the date of such sale or transfer; and

(5) Transmit to the new owner or buyer the litter number of the animal acquired, and the breeder's license number in order that the new owner has assurance and proof that the animal was legally bred (bred by a licensed breeder); and

(6) Immunize all cats and dogs offered for sale, trade or other compensation or for free giveaway (except an animal taken to the Humane Shelter) against common disease; in the case of dogs, against canine distemper, adeno-virus parainfluenza, parvovirus, coronavirus, and leptospirosis, and in the case of cats, against feline rhinotracheitis, and panleucopenia; and

(7) Not offer a puppy or kitten under the age of eight (8) weeks for sale, trade, other compensation or for free giveaway, except a puppy or kitten or litters of them taken by ordinance enforcement authorities. Any fees incurred by ordinance enforcement authorities for animals taken to the Humane Shelter will be charged to the pet owner for all animal(s) taken; and

(8) Breeder must furnish warrant of health for each animal sold, traded or given away free for a period of not less than fifteen (15) days with recommendation to have animal examined by a licensed veterinarian. (Gen. Ord. No. 25, 2001, As Amended, 3-14-02; Gen. Ord. No. 11, 2009, As Amended, 9-11-09)

Sec. 6-83 Violations.

a. Any employee of an authority charged with ordinance enforcement may issue any individual or business in violation of any of the provisions regarding payment of fees and licensing in this Division a notice of ordinance violation called a Citation. Upon issuance of a Citation, the individual or business has twenty-four (24) hours to bring itself into compliance with this Division. Each day thereafter is a separate violation subject to the penalty established in Subsection b. The penalty established in Subsection b. shall be paid to the City within twenty-four (24) hours of the notice of ordinance violation. In the event the individual or business does

not bring itself into compliance and/or such payment is not made within twenty-four (24) hours, the City may file a proceeding in any court of competent jurisdiction to collect the applicable penalty and/or enforce compliance.

b. Individuals or businesses who violate any provisions of this Division shall be subject to a fine of double the applicable license fee for the first offense, with the fine for each subsequent offense of this Division increasing by an increment of double the license fee. In the event that the individual or business has no additional violations of this Division for a period of twelve (12) consecutive months, the fine for any violation of the Division after that period shall be double the applicable license fee for the first offense, with the fine for each subsequent offense increasing by an increment of double the applicable license fee.

c. The Board of Public Works and Safety may bring any action permitted by State law to enforce this Division including, but not limited to, an action seeking an injunction. (Gen. Ord. No. 25, 2001, As Amended, 3-14-02)

Sec. 6-84 Restraint and Nuisance.

a. All animals shall be under restraint as defined in this Division.

b. **Animal in Heat.** Every female animal in heat shall be confined in a building or secure enclosure in such a manner that the animal cannot come in contact with a male animal of the same species except for planned breeding.

c. **Vicious, Fierce or Dangerous Animal.** Every vicious, fierce or dangerous animal, as defined in Sec. 6-69(hh), shall be confined by the owner within a building or secure enclosure and shall be securely muzzled or caged when off the premises of the owner. If no secure area can be located, ordinance enforcement authorities shall impound said animal at the owner's expense until a suitable facility is located. (Gen. Ord. No. 25, 2001, As Amended, 3-14-02)

d. No owner shall fail to exercise due care and control of his animal's excrement to prevent them from becoming a public nuisance. (Gen. Ord. No. 28, 2003, 10-9-03)

e. No owner or responsible person shall fail to remove an animal's excrement from public land or from his own property, or from the property of another, except a person working with a service dog. (Gen. Ord. No. 28, 2003, 10-9-03)

Sec. 6-85 Impoundment; Reclamation.

a. **Animals To Be Impounded.**

(1) At-large animals; unlicensed animals; nuisance animals; vicious, fierce or dangerous animals; and animals which have attacked or bitten persons or other animals shall be impounded. Bruising or scratching of the person or animal is evidence of an attack. Such

animals may be taken by ordinance enforcement authorities and impounded in the animal shelter or other appropriate facility and there confined in a humane manner.

(2) In lieu of impounding an animal which may be impounded, according to this Division, the ordinance enforcement authorities may issue to the known owner or harbinger of such animal a notice of ordinance violation.

(3) Animals found in cruel, abusive or neglectful situations; animals trained, bred or kept for the purpose of animal fighting; or animals that have been abandoned as defined in this Division or under State law may be promptly seized if no immediate contact with a responsible person can be made; provided, however, that the ordinance enforcement authorities shall leave written notice saying the location of the animal and the reason for impoundment.

(4) An animal found confined or abandoned on private property in violation of this Division shall be impounded.

b. **Jurisdiction of Ordinance Enforcement Authorities for Impoundment.** The jurisdiction of the ordinance enforcement authorities for enforcing this Division shall include the municipality of Terre Haute.

c. **Notice of Impoundment.** If by a license tag or other means the owner of an impounded animal can be identified, ordinance enforcement authorities shall immediately upon impoundment notify the owner by telephone or other means. Animals whose owners are not identifiable or cannot be notified after reasonable effort shall be held for five (5) days from impoundment before becoming the property of the City. Animals that are property of the City may be placed for adoption or humanely euthanized.

d. **Impounded Animals – Reclamation.**

(1) An owner reclaiming an impounded dog or cat shall reimburse the Board of Public Works and Safety and/or the Humane Shelter for all the costs associated with the impoundment. An owner reclaiming an impounded animal other than a dog or cat shall pay a boarding fee in keeping with the size and needed care of the animal as determined by the facility holding the animal. This boarding fee shall be paid in addition to any fines or costs levied for violations of this Division.

(2) An owner reclaiming an impounded animal that is not under the jurisdiction of the City shall pay all costs associated with the impoundment.

(3) The Humane Shelter and/or ordinance enforcement authorities shall have the right to determine the length of time to board animals being impounded due to a case of neglect or animal cruelty. Animals being housed beyond the set time limit must be surrendered to the Humane Shelter for adoption or euthanasia as determined by the Humane Shelter and/or ordinance enforcement authorities. Severe Neglect or abuse cases should be housed at a medical or boarding facility at the expense of the owner. Persons convicted of animal cruelty or neglect shall reimburse the Humane Shelter for any costs, including medical care and/or cost of

euthanasia, incurred by the Humane Shelter or ordinance enforcement authorities for care or destruction of the animal in the case.

(4) No impounded animal may be released if the animal's return presents a danger to the public, or the animal, or otherwise results in a violation of this Division.

e. Notwithstanding any provision of this Division to the contrary, an injured or diseased animal need not be retained five (5) days, but may be disposed of at any time when in the reasonable discretion of the ordinance enforcement authority and after the assessment of a veterinarian, it is determined to be more humane and reasonable to do so, rather than provide additional veterinary care, and after reasonable efforts to find the animal's owner have been unsuccessful. (Gen. Ord. No. 25, 2001, As Amended, 3-14-02)

f. Prior to the return to its owner of an impounded dog or cat which at the time of impoundment did not bear a permanent means of identification as required by Sec. 6-73, the ordinance enforcement authority shall cause a microchip with a registered identification number to be implanted in the animal. The fee for such a service shall be (\$35.00) or as determined by the animal shelter or facility. (Gen. Ord. No. 11, 2009, As Amended, 9-11-09)

Sec. 6-86 Animal Care.

a. **Poisoning.** No persons shall expose any known poisonous substance, whether mixed with food or not, so that it shall be reasonably likely to be eaten by any animals; provided, that it shall not be unlawful for a person to expose on his own property common rat or mouse poison, unmixed or mixed only with vegetable substances. Persons who violate this Section shall be subject to a fine of a minimum of One Hundred Fifty Dollars (\$150.00) for each offense.

b. **Motor Vehicle Accidents Involving Animals.** Any person, who, as the operator of a motor vehicle, strikes an animal, shall report the accident to the appropriate law enforcement agency.

c. It shall be unlawful for any dog or cat to ride in the bed of a pickup truck on public streets, or highways and/or rights-of way unless the animal is securely caged or under restraint in a proper harness. Animals must be protected from adverse environmental conditions. Persons who violate this Section shall be subject to a fine of a minimum of Fifty Dollars (\$50.00) for each offense.

d. **Use of Devices To Induce Performance.** No performing animal exhibition or circus shall be permitted in which animals are induced or encouraged to perform through the use of chemical, mechanical, electrical, or manual devices in a manner that is likely to cause physical injury or suffering. Persons who violate this Section shall be subject to a fine of a minimum of Five Hundred Dollars (\$500.00) for each offense.

e. It shall be unlawful for a person willfully to injure, molest, attack or disturb in any way a bird, or the nests, eggs, young or brood of birds, in the City; provided,

however, this Section shall not apply to nonmigratory pigeons, starlings or any birds declared or defined by 115

f. subject to a fine of a minimum of Twenty Five Dollars (\$25.00) for each offense.

f. **General Animal Care.** Every owner of an animal within the City shall see that the animal:

(1) Is kept in a clean, sanitary, and healthy manner and is not confined so as to be forced to stand, sit, or lie in excrement; and

(2) Has proper and adequate food, water, shelter, and protection from the weather; and

(3) If diseased or injured, receives care as necessary to prevent suffering. If the animal is diseased, it must be segregated from other animals so as to prevent the transmittal of the disease to other animals. Owners may be given twelve (12) hours notice to provide veterinary care for a sick or injured animal before being cited by the ordinance enforcement authorities.

(4) Trapped animals must be humanely treated and released within twenty-four (24) hours to appropriate law enforcement authority or to the shelter. (Gen. Ord. No. 11, 2009, As Amended, 9-11-09)

(5) Persons who violate this Section shall be subject to a fine of a minimum of Three Hundred Dollars (\$300.00) for each offense.

g. **Abandonment** No owner of an animal shall abandon such animal. Persons who violate this Section shall be subject to a fine of a minimum of Three Hundred Dollars (\$300.00) for each offense.

h. **Cruelty to an Animal.**

(1) Cruelty to an animal is considered to exist whether “active” as in torture, torment, deprivation of necessary sustenance, use of physical blows (beating), mutilation (destruction of any body part), killing for any reason other than self-protection or to protect another human or animal from injury, or in some way acting as a causative agent in the infliction of cruelty. “Passive” cruelty is considered to exist when there is any omission resulting in the occurrence of pain, suffering (from any cause), or death.

(2) It shall be unlawful to be responsible or to permit an act of cruelty toward a vertebrate animal resulting in serious injury or death to the animal; or

(3) Kill a vertebrate animal without the authority of the owner of the animal (*I.C.* § 35-46-3-12), except as permitted by Indiana statute.

(4) It shall be unlawful for anyone not a veterinarian to be responsible for or permit the physical altering of any animal in any procedure that normally requires a veterinarian, such as ear cropping, tail docking, declawing, or neutering of either a male or female dog or cat.

(5) It shall be unlawful to negligently or willfully fail to provide food, potable drinking water, shelter, or reasonable protection from the weather thereby inflicting unnecessary cruelty on any animal. "Shelter" should afford protection from the sun as well as cold, rain, dampness, etc. and should be suited to the size and breed of the animal being housed. Cardboard, fiberboard, or any other structure that fails to protect an animal from adverse atmospheric conditions shall not be considered proper shelter under this Section.

(6) Any act, omission or neglect contributing to, or causing unjustifiable pain and/or suffering shall be considered cruelty to an animal.

(7) No animal shall be left unattended in a vehicle when the conditions in that vehicle would constitute a health hazard to the animal.

(8) Animals kept in wire pens/cages, whether above ground or not must have a resting area available so that the animal is not made to sit/lie/stand only on a wire surface area. Protection from the elements applies the same as above (5).

(9) It shall be unlawful and is hereby declared to be a public nuisance for any person to use, place, set or cause to be set within the City or upon lands owned by the City any traps except cage-type live traps approved by the Board of Public Works and Safety and used for the control of nuisance animals. This prohibition shall not apply to any trap specifically designed to kill rats, mice, gophers or moles so long as the owner of the property is aware of the location where the trap(s) are set and monitors said trap(s) at least once every twenty-four (24) hours.

Any traps that have been unlawfully set in the City may be seized and used as prima facie evidence that a violation has been committed. Upon conviction, said trap(s) shall be forfeited to and disposed of by order of the court.

(10) Any person live-trapping a cat or dog must surrender the animal to the humane shelter or ordinance enforcement authority within twenty-four (24) hours or sooner, or if part of a TNR – Trap/Neuter/Release Program within seventy-two (72) hours. It shall be unlawful for any trapped animal to be killed, injured, dumped or abandoned.

In the case of a TNR program, there must be a designated caregiver before an animal may be released. (Gen. Ord. No. 11, 2009, As Amended, 9-11-09)

(11) **Lost or Stray Animals.**

(A) Persons finding a stray animal are to notify the appropriate law enforcement authority and the Terre Haute Humane Society within forty-eight (48) hours. At the discretion of the ordinance enforcement authorities, the animal may be kept by the finder and a found report must

be left with the ordinance enforcement authorities and the Humane Society, to enable the finder an opportunity to return the animal to its rightful owner.

- (B) Upon demand by ordinance enforcement authorities, any found animal will be surrendered to the ordinance enforcement authorities and held for five (5) days, before a disposition is made.
- (C) Persons finding an animal are obligated to comply with all rules and regulations of this Division pertaining to humane care and treatment of animals, while said animal is in their custody awaiting return to its actual owner.
- (D) With the exception of the Humane Shelter the finder will be considered the found animal's owner for the purposes of this Division only after the animal is in the finder's custody for ten (10) continuous days.

(12) No animal may be euthanized by any method other than those approved by The American Veterinary Medical Association. No animal's body shall be disposed of until all vital signs are checked (fixed pupil, cessation of heartbeat and respiration) to assure that death has occurred.

(13) No person shall raise or kill a dog or cat for food or the skin or fur; nor shall any person or business possess any items made from or containing dog, puppy, cat or kitten fur; or any food item containing dog, puppy, cat or kitten. All items made from or containing any type of fur must be labeled with the name of the species whose fur is used.

(14) No person shall mutilate any animal whether dead or alive. This provision does not apply to accepted livestock practices concerning humane slaughter.

(15) No person shall engage or cause or allow any other person to engage in a sexual act with any animal.

(16) Any animal observed by a police officer or other ordinance enforcement authorities to be in immediate danger may be removed from such situation by the quickest and most reasonable means available.

i. Tethering. (Gen. Ord. No. 16, 2007, 10-11-07)

(1) It shall be unlawful for any person to tether, fasten, chain, tie, or restrain or cause an animal to be fastened, chained, tied, or restrained to (but not limited to) houses, trees, fences, garages, or other stationary or highly immobile objects by means of a rope, chain, strap or other physical restraint for the purpose of confinement, except in circumstances where all of the following requirements are met:

(a) The tethering shall not be for more time than is necessary for the animal owner or custodian to complete a temporary task that requires the animal to be physically restrained for a reasonable period.

(b) The animal must be tethered by a non-choke type and properly fitted collar made of leather, nylon or other non-abrasive material or a body harness to a tether, that is at least five (5) times the body length of the animal, measured from the animal's nose to the base of the tail and which the chain and tether is free from entanglement, so as to allow the animal to move about freely. No chain or tether shall weigh more than one-eighth (1/8) of the animal's weight.

(2) The animal must have access to food, water and shelter at all times.

(3) The animal shall be monitored periodically.

j. **Managed Free-roaming Cats.** The ordinance enforcement authority or its designee, in order to encourage the stabilization of the free-roaming cat population in the City, may:

(1) Trap any free-roaming cat in a humane manner;

(2) Have the cat surgically sterilized, ear-tipped, and vaccinated against rabies by a licensed veterinarian; and

(3) Obtain a colony license at no charge from the Board of Public Works and Safety after approval from the Animal Control Commission. (Gen. Ord. No. 11, 2009, As Amended, 9-11-09)

k. **Care for Unmanaged Colonies Prohibited.** It shall be unlawful for a person to provide food, water or shelter to a colony of free-roaming cats, unless:

(1) The colony is a Managed Colony, registered with the ordinance enforcement authority or its designee; or

(2) The food, water or shelter is provided in conjunction with the implementation of trap, neuter, and return methodology as set forth in this Division. (Gen. Ord. No. 11, 2009, As Amended, 9-11-09)

l. Violation of Section h. through k. shall subject the violator to a fine of a minimum of Three Hundred Dollars (\$300.00) for each offense. (Gen. Ord. No. 25, 2001, As Amended, 3-14-02)

Sec. 6-87 Specific Animal Care Provisions for Carriage Horses.

a. In addition to the provisions set out in general animal care above, every owner of an animal used to draw a vehicle for hire within the City shall see that:

- (1) The animal has adequate flesh and muscle tone;
- (2) The hooves of the animal are properly trimmed and shod within every eight (8) weeks of work. Acceptable horseshoes for this work are limited to Borium studded type or polyurethane (plastic) studs optional. Records must be kept by the owner of the dates and the name of the blacksmith who shod the animal;
- (3) The animal is groomed daily, and shall be kept clean while at work and in the stable;
- (4) The animal is not overdriven, or kept, to result in over-heating or exhaustion. Animals shall not be worked during the middle of the afternoon during hot days when livestock warnings are issued. Whenever possible during warm weather the driver shall park in the shade. Animals shall not be worked more than two hours without being given a fifteen (15) minute rest period. Maximum working period for any one animal shall be eight (8) hours out of every twenty-four (24) hours, and any five (5) out of seven (7) consecutive days. During rest periods, the person in charge of such horse shall make fresh water available to the horse.
- (5) No animal may be whipped in front of the shoulder area of the horse, in accordance with Quarter horse association rules;
- (6) The speed at which any animal is driven shall not exceed a trot;
- (7) The animals shall not be left unattended on a street or public way;
- (8) The harness, bridle, and any other equipment required or in use is properly fitted, in a good working order, free of makeshift design, and used so as not to cause pain or injury to the animal. Twisted wire snaffles are not permitted.
- (9) Horses shall not be worked in temperatures below negative ten degrees (-10°) Fahrenheit, with wind chill factor applied. At no time shall a horse be at work when the sum of the relative humidity and ambient temperature exceeds one hundred and sixty degrees (160°) Fahrenheit. Horses should not be worked at temperatures above ninety five degrees (95°) Fahrenheit. For the purposes of this subdivision, temperatures shall be those measured “downtown” and broadcast by the local radio stations. An operator of a horse already at work at the time the temperatures reach the above described conditions shall return the passengers to the point of loading and rest the horse in sheltered conditions. Thereafter, such horses may be worked only when the weather conditions once again reach acceptable limits.
- (10) Horses shall not work on a public highway, street or path during adverse weather or other conditions, which are a threat to the health or safety of the horse or the public. Adverse weather conditions may include but shall not be restricted to snow, ice, heavy rain or other slippery conditions.
- (11) Carriage companies shall equip all carriages/horses with a manure catching device for use at all times while working.

(12) All such carriages shall adhere to state law on slow moving vehicles. No horse drawn carriage shall be operated between the hours of 7:00 a.m. through 9:30 a.m. and 3:30 p.m. through 6:00 p.m., Monday through Friday.

(13) The rental horse business shall take immediate action to obtain veterinary treatment, care and attention when any horse is or becomes sick, diseased, lame or injured. If a horse dies while at work or in the stable area, or is involved in an accident resulting in an injury to a horse, ordinance enforcement authorities shall be notified immediately.

(14) A horse covered by this Section which is or becomes lame or suffers from a physical condition or illness making it unsuitable for work shall be removed from work by the rental horse business or may be ordered removed from work by ordinance enforcement authorities. In the event of a dispute regarding such physical condition or illness, ordinance enforcement authorities may require that a rental horse be examined by a veterinarian in order to determine its ability to safely work as a rental horse. The cost of any such examination shall be borne solely by the rental horse company. A horse which has been removed from work under this Section shall not be returned to work until it has recovered from the condition which caused removal from work, or until such condition has improved sufficiently that its return to work will not aggravate the condition or otherwise endanger the health of the horse. A violation of this Section shall be presumed if a horse is found at work in a sick or disabled condition within forty-eight (48) hours after its removal from work for the same condition which caused such removal. Such presumption may be rebutted by offering a written statement from a veterinarian who examined the horse after the time of removal from work but prior to its return to work, which statement sets out the veterinarian's professional evaluation of the condition and his/her opinion that it was suitable for the horse to return to work prior the expiration of the forty-eight (48) hour period. This statement shall be carried with the horse during the presumed forty-eight (48) hour recovery period, and provided to ordinance enforcement authorities upon request.

(15) Animals not on the real property of its handler shall be secured by a leash or lead.

b. Any ordinance enforcement authority may issue to any person in violation of this Section a notice of ordinance violation. The penalty established in Subsection c. may, at the discretion of the animal owner, be paid to the authorized agency within seventy-two (72) hours in full satisfaction of the assessed penalty. In the event that such payment is not made within the period prescribed, proceedings shall be filed in the county court of competent jurisdiction. In addition, to protect the health and safety of the animal and the public, upon a finding that an animal is sick, injured, lame, malnourished, or in any other condition that renders it unfit for drawing a vehicle for hire, any animal control officer may issue an order that the animal is deemed unfit for work and order it removed from the vehicle and the city streets; such order may be appealed within forty-eight (48) hours to the Board of Public Works and Safety which shall, upon hearing all evidence, confirm or deny the order of the ordinance enforcement authority.

c. Persons who violate any provision of this Section shall be subject to a fine of Fifty Dollars (\$50.00) for each violation and each day shall be considered a separate violation.

d. As used in this Section, the term horse shall also refer to a mule, donkey, or other similar hooved animal. (Gen. Ord. No. 25, 2001, As Amended, 3-14-02)

Sec. 6-88 Wild Animals; Swine; Hooved Animals.

a. No person shall keep or permit to be kept on his premises any wild, carnivorous animals except as provided in this Section.

b. Exceptions.

(1) This Section shall not be construed to apply to zoological parks, circuses, performing animal exhibitions or research laboratories.

(2) Any person owning a large, carnivorous animal prior to the enactment of this Section shall be permitted to continue ownership of that animal, provided that the animal is registered after enactment of this Section. A copy of the registrations must be kept by the owner as evidence of possession of the animal prior to the enactment of this Section.

(3) Any person owning or keeping a large, carnivorous animal not indigenous to the locality must have their property properly zoned to accommodate the maintenance of such animals.

(4) It shall be unlawful for a person to keep swine, with the exception of Asian Pot-Bellied Pigs, unless such premises are stockyards, slaughterhouses, or other premises where the keeping or raising of livestock is permitted by county zoning ordinances.

(5) It shall be unlawful for a person to own, keep, or breed a horse, pony, mule, donkey, jackass, or llama in the City on premises which measure less than eight thousand (8,000) square feet in a lot area per animal, unless such premises are registered as a stable under Sec. 6-75i. of the *Code*. (Gen. Ord. No. 25, 2001, As Amended, 3-14-02)

Sec. 6-89 Reptiles.

a. Registration – Pet Shops.

(1) Any pet shop intending to harbor, sell, trade, or in any way distribute reptiles within the City must register with the Board of Public Works and Safety, in writing, of such intention before any reptile may be harbored, sold, traded, or distributed.

(2) Any pet shop harboring, selling, trading, or in any way distributing reptiles within the City shall make available for inspection by the ordinance enforcement authorities an inventory of the number and type of reptiles received, the number and type distributed by sale, trade, death, or in any other manner, and the number and type on hand.

b. Lost or Impounded Reptiles. Lost reptiles shall be impounded and released to the owner or disposed of, provided, however, that any nonpoisonous reptiles native to Indiana

shall be presumed wild and released to a natural habitat. (Gen. Ord. No. 25, 2001, As Amended, 3-14-02)

Sec. 6-89.1 Dangerous Animals Prohibited.

a. **Ownership/Possession Prohibited.** This Section shall not apply to animals under the control of a law enforcement or military agency. It shall be unlawful for an owner or keeper of a vicious, fierce, or dangerous animal to cause, suffer, or allow it to go unconfined and unrestrained on the owner's or keeper's premises, or to run at large, in the City.

b. It shall be the duty of any person with the authority to impound an animal forthwith to impound any vicious, fierce or dangerous animal found unconfined or running at large. For the purpose of this Section, an animal may be declared dangerous by an ordinance enforcement authority if the animal exhibits vicious behavior in present or past conduct, including but not limited to:

(1) Evidence that the animal has, without provocation, bitten or attacked a person and/or animal; or

(2) Did bite or attack, once causing wounds or injuries creating a potential danger to the health or life of the victim; or

(3) Could not be controlled or restrained at the time of a bite or attack upon an animal or person; or

(4) The animal has been microchipped by a licensed veterinarian for the purpose of determining a positive occurrence of a prior bite or attack; and

(5) Caused a need for veterinarian care of an animal after an attack.

c. Such vicious, fierce or dangerous animal may be destroyed by ordinance enforcement authorities if such destruction is necessary to preserve the public health, safety and welfare of the community.

d. **Costs.** The owner of any animal, which is impounded and/or euthanized under this Section, shall be held responsible for payment of any expenses so incurred by the Humane Shelter and the ordinance enforcement authority. Failure to pay such fee within fifteen (15) days after destruction of such animal shall constitute a violation of this Division and may subject the owner to a court judgment in the amount of the costs incurred for impounding and/or euthanasia in addition to court costs. (Gen. Ord. No. 25, 2001, As Amended, 3-14-02; Gen. Ord. No. 11, 2009, As Amended, 9-11-09)

Sec. 6-89.2 Biting Animals; Report; Procedure.

a. The person responsible for any animal, which has bitten a person or another animal must report the incident to the County Board of Health/local health officer or ordinance

enforcement authority. Upon receiving the report of a bite, the animal will be quarantined for ten (10) days with the place of confinement to be at the discretion of the County Board of Health/local health officer or ordinance enforcement authority. During the quarantine period, the animal is to be securely confined and kept from contact with any other animal or person.

b. During the quarantine period, the owner must provide a current rabies vaccination certificate for the cat or dog that is being quarantined. If proof of vaccination cannot be supplied, the animal will be vaccinated by a veterinarian at the owner's expense before release.

c. No person other than the County Board of Health/local health officer or ordinance enforcement authority or veterinarian shall kill or cause to be killed any animal suspected of being rabid except in cases of immediate self-protection. If that occurs the person will retain the body and immediately notify the County Board of Health/local health officer.

d. Violations of these provisions shall be punishable by a fine of a minimum of Three Hundred Dollars (\$300.00) per violation plus court costs and responsibility for payment for any injections required to be given because of the violation of these provisions. (Gen. Ord. No. 25, 2001, As Amended, 3-14-02; Gen. Ord. No. 11, 2009, As Amended, 9-11-09)

Sec. 6-89.3 Rabies.

a. **Rabies Vaccination Required.** It is unlawful to own or harbor a dog or cat six (6) months of age or older without a valid rabies vaccination.

b. **Animals Biting Person.** If an owned animal has bitten a person, the animal shall be impounded at a secure location, veterinary hospital, or kennel of the owner's choice at the owner's expense. This impoundment shall be for a period of ten (10) days in order to determine whether or not the animal has rabies. If the animal dies during the period it shall, at the owner's expense, be sent to the proper authorities to determine whether or not it was rabid.

c. **Disposition of Exposed Animals.** Any animal that has been bitten by an animal known to have rabies shall be confined for a period of six (6) months at the owner's expense or be destroyed.

d. **Duties of the Owner of a Suspect Animal.** It is unlawful for any person who owns or harbors an animal known to be infected with rabies to allow such animal to leave the owner's premises, except for the purpose of transporting the animal to the animal shelter or veterinarian. Every owner, upon ascertaining an animal is rabid, shall immediately notify the Terre Haute Police Department and the County Board of Health/local health officer.

e. **Euthanization of Stray Animals.** If a stray animal has bitten a person, it shall be confined in the animal shelter for a minimum of five (5) days. At the end of the (5) day period, if unclaimed and deemed to be a vicious, fierce or dangerous animal as defined herein, the animal may be euthanized and its brain sent to the Indiana Department of Health Rabies laboratory for a diagnostic test or held in quarantine; the outcome will be determined by the ordinance enforcement authority and the Humane Shelter.

f. Violation of these provisions shall result in the same penalty stated in the quarantine provisions. (Gen. Ord. No. 25, 2001, As Amended, 3-14-02; Gen. Ord. No. 11, 2009, As Amended, 9-11-09)

Sec. 6-89.4 Adopted Animals.

Any dog or cat adopted from a humane shelter or any animal welfare organization incorporated under state laws shall be spayed or neutered by a veterinarian within one (1) month of adoption or by six (6) months of age whichever is later. (Gen. Ord. No. 25, 2001, As Amended, 3-14-02)

Sec. 6-89.5 General Provisions.

a. **Animal Census.** Upon enactment of this Division, the City of Terre Haute, at the direction of the Mayor and with approval of the Common Council, may instigate and carry out a City-wide census for the purpose of carrying out the provisions of this Division. A census may be held once every two (2) years thereafter at the request of the Mayor or the Common Council. The Board of Public Works and Safety shall administer the census.

b. **Interference with Animal Control Officer – Penalty.** Whoever forcibly assaults, resists, opposes, obstructs, prevents, impedes, or interferes with any ordinance enforcement authority while that officer is engaged in the execution of the duties required of ordinance enforcement authorities under this Division shall be subject to penalties under Indiana Code for resisting, obstructing, or interfering with law enforcement (*I.C.* § 35-44-3-3).

c. **Animal Burial.** Animals may not be buried within the City limits at a depth less than three feet (3') and within fifty feet (50') from a water source.

d. Disposition of Funds.

(1) All fees or monies collected, any donations, gifts, bequests or devises shall be paid to the City Controller. Money so paid shall be transmitted to the City Controller and shall be placed in a dedicated animal care fund that shall be used to promote the safe and humane treatment of animals in the City, to pay for any reasonable expenses incurred promoting the proper care, treatment and sterilization of animals and educating the public regarding the same. No expenditure may be made from the dedicated animal care fund unless first approved by a majority of the Animal Control Commissioners. The expenditure of funds from the dedicated animal care fund shall be subject to all state and local appropriation and purchasing requirements. Any funds donated for a specific purpose shall be used consistent with the donor's specific request.

(2) All money generated, received or collected in response to any Animal Control Commissioner or City special fund raising projects shall be payable to the City Controller and deposited in a dedicated animal control special projects fund to be used in a manner consistent with the announced purpose of any fund raising project. No expenditure may be made from the

dedicated animal control special projects fund unless first approved by the Animal Control Commission or the Board of Public Works and Safety subject to all state and local appropriation and purchasing requirements. (Gen. Ord. No. 25, 2001, As Amended, 3-14-02)

Sec. 6-89.6 Penalties.

Except as otherwise specifically provided, these penalties shall apply to a violation of any Section of this Division.

a. Any ordinance enforcement authority shall issue to any person in violation of this Division a notice of ordinance violation. The penalty established in Subsection b. shall be paid in the City Clerk's Office.

b. Unless otherwise specific herein, persons who violate any provision of this Division shall be subject to a fine in the following amounts:

First Offense	\$ 50.00
Second Offense	\$ 75.00
Third and subsequent	\$100.00

c. Each offense shall be considered a separate offense and subject to a fine.

d. Each twenty-four (24) hour period that a violation occurs will be considered a separate offense and can be cited as such.

e. Violations of this Division may result in the immediate impoundment of the animal(s). (Gen. Ord. No. 25, 2001, As Amended, 3-14-02)

Sec. 6-89.7 Animal Control Commission – Establishment; Duties.

a. There is created and established an Animal Control Commission of the City of Terre Haute which shall have the authority and responsibility to make recommendations to the Common Council and the Board of Public Works and Safety as to the necessary ordinances concerning control of dogs, cats and other animals.

b. **Animal Control Commission – Membership, Terms, and Meetings.** The Animal Control Commission shall consist of five (5) members as follows:

(1) Two (2) members shall be residents of the City of Terre Haute selected by the Common Council who are knowledgeable of, or experienced in matters pertaining to animal control, animal welfare and issues relating to same.

(2) The Director of the Terre Haute Humane Society shall serve as a non-voting member of the Commission in an ex-officio capacity. (Gen. Ord. No. 15, 2009, 7-8-10)

(3) Three (3) members shall be residents of the City of Terre Haute selected by the Mayor or, or experienced in matters pertaining to animal control, animal welfare and issues relating to same. (Gen. Ord. No. 15, 2009, 7-8-10)

c. Each member shall serve a three (3) year term. Appointment shall be made on or before January 1st of each year. A member continues to serve until a successor is appointed and qualified. This selection shall not be based on political affiliations, but on interest in animal care and control and knowledge of same.

d. The Commission shall meet at least once every other month and at other times as determined by the Chair, or upon written request to the Chair by any three (3) members. It shall adopt rules and regulations as may be necessary or appropriate in its judgment to carry out the provisions of the ordinances and laws under which it exists and performs its functions. The Chair shall notify the appointing authority and seek removal and replacement of any member who misses two (2) consecutive meetings without a reasonable excuse.

e. The Commission shall elect a Chair, Vice-Chair, and a Secretary from among its members.

f. Three (3) members of the Animal Control Commission shall constitute a quorum to do business.

g. In the case of vacancy in office due to death, resignation, incapacity, removal or otherwise, the appointment to fill the vacancy so occurring shall be made by the original appointing body for the unexpired term only and shall be subject to the provisions stated in Subsection c. above. (Gen. Ord. No. 25, 2001, As Amended, 3-14-02)

Sec. 6-89.8 Animal Control Commission – Pet Licensing Review, Neglect, & Cruelty Cases.

a. Any person with a past conviction for animal abandonment, abuse, neglect, or cruelty must have permission from the Animal Control Commission before any license may be issued.

b. No license shall be issued to any household/address wherein a person convicted of animal cruelty/neglect resides, regardless of animal ownership claims. (Gen. Ord. No. 25, 2001, As Amended, 3-14-02)

ARTICLE 5. SPECIFIC PUBLIC SAFETY REGULATIONS.

Division I. Littering Regulations.

Sec. 6-90 Littering Prohibited.

No person shall throw, discharge, deposit, place or leave or cause to be thrown, discharged, dumped, deposited, placed or left on any of the streets, parkways, roadways, thoroughfares, alleys, sidewalks, vacant lots, front yards or porches, in or on the grounds of the public parks, swimming pools, playgrounds, recreation areas, public buildings, streams, water or banks of such streams or rivers, any waste paper, ashes, glass, cans, dirt, rubbish, waste, garbage, refuse or any other trash. Any person violating any provision of this Division shall upon conviction thereof be fined in an amount not to exceed Three Hundred Dollars (\$300.00). Each day such violation is committed or is permitted to continue shall constitute a separate offense and shall be punishable as such hereunder. (Gen. Ord. No. 16, 2002, 8-8-02)

Sec. 6-91 Causing Litter on Property.

It shall be a violation of this Article for any person to place on, throw onto, cast onto or permit any litter, debris, junk, refuse or thing causing litter, junk or debris onto property of any person, firm, association, corporation, the State of Indiana, and it shall further be a violation of this Article for any parent, guardian, or person charged with, or having custody of, any minor child under the age of eighteen (18) years to cause to permit such minor child under the age of eighteen (18) years to place on, throw onto, cast onto or permit any litter, debris, junk, refuse or thing causing litter, junk or debris onto the property of any person, firm, association, corporation, the State of Indiana and its political subdivisions, including but without being limited to the City of Terre Haute, Indiana. For any person violating the provisions of this Article, the penalty for the first offense in any twelve (12) month period shall be as provided by the Ordinance Violation Bureau (See § 2-140 of this *Code*). All second and subsequent offenses in any twelve (12) month period are subject to enforcement through the judicial system as provided by State statute and local ordinance. (Special Ord. No. 85, 1994, § 1, (525.04), 12-8-94)

Sec. 6-92 Littering Prohibited in Public Parks.

a. No person shall throw, place or allow to remain in any public park, public parkway or public boulevard of the City any box, paper, stale or broken food, food remnants, melon rinds, or other waste or rubbish of any kind, or display for sale or for advertising purposes in any public parks, parkway or public boulevard of the City any good, article, thing, placard, sign or circular, except upon written permission from the Board of Park Commissioners. Any person violating any provision of this Article shall upon conviction thereof be fined in an amount not to exceed Three Hundred Dollars (\$300.00). Each day such violation is committed or is permitted to continue shall constitute a separate offense and shall be punishable as such hereunder. (Gen. Ord. No. 16, 2002, 8-8-02)

b. Additional park regulations are set forth in Chapter 5 of this *Terre Haute City Code*.

Sec. 6-93 Handbill Regulations.

a. **Handbill.** As used in this section, means any printed or written matter, any sample or device, circular, leaflet, pamphlet, paper, booklet, or any other printed matter or

literature which is not delivered by the United States mail. Such definition does not include a newspaper.

b. **Commercial Handbill.** Any printed or written matter, any sample or device, circular, leaflet, pamphlet, paper, booklet, or any other printed matter or literature which:

- (1) Advertises for sale any merchandise, product, commodity, thing, good or service;
or
- (2) Directs attention to any business or mercantile or commercial establishment, or other activity, for the purpose of directly promoting the interest thereof by sales;
or
- (3) Directs attention to or advertises any meeting, performance, function, exhibition or event of any kind for which an admission fee is charged for the purpose of private gain or profit.

c. **Newspaper.** A daily, weekly, semi-weekly, or tri-weekly publication or periodical of general circulation that has been published for at least three (3) consecutive years in the same city or town that has been entered, authorized, and accepted by the United States Postal Service for at least three (3) consecutive years as mailable matter of the periodicals class and has at least fifty percent (50%) of all copies circulated paid for by the subscribers or other purchasers at a rate that is not nominal.¹¹³

d. No person shall distribute or cause to be distributed any handbill or commercial handbill to pedestrians upon the public streets or sidewalks of the City of Terre Haute.

e. No person shall throw or deposit any handbill or commercial handbill in or upon any public sidewalk or street or other public place within the City of Terre Haute.

f. No person shall place or cause to be placed in or upon any parked motor vehicle upon the public streets, parking lots, parking garages or any other public place where a motor vehicle is parked within the City, any handbill or commercial handbill, except where express permission is given by the owner of the motor vehicle.

g. No person shall post, paste, tack or in any way attach or affix to any tree, telegraph, telephone, electric light or power pole or other pole, any handbill, commercial handbill, card bill, notice, announcement or other advertisement. This Section shall not apply to legal notices posted by persons acting under authority of an order of court, or in pursuance of law. (Gen. Ord. No. 19, 2004, As Amended, 8-12-04)

Sec. 6-94 Reserved for Future Use.

Division II. Garbage and Trash Regulations.

¹¹³ I.C. sec. 5-3-1-0.4 gives definition of “newspaper.”

Sec. 6-95 Definitions.¹¹⁴

As used in this Division:

a. **Lot or Parcel Lot or Parcel of Real Estate.** Shall include, in addition to those grounds within their respective boundaries, all of the grounds lying to the center of the street or alley or alleys where said street or alley is not improved.

b. **Garbage.** All organic household waste, offal, animal and vegetable matter prepared or intended for use as food, condemned foodstuffs and materials and substance materials and things ordinarily disposed of in containers and incinerators by hotels, restaurants, stores, hospitals, apartment houses, and private dwellings.

c. **Trash.** Rubbish and refuse including, but not limited to, glass bottles and containers, broken glass, rubber products, metals, rags, weeds, tree toppings, grass, leaves, discarded furniture, and appliances.

d. **Rank Vegetation.** Any and all junk, rubbish, or debris which is harmful to the general public health and welfare or may detract from the appearance of the neighborhood.

e. **Other Waste Substance.** Any and all junk, rubbish, or debris which is harmful to the general public health and welfare or may detract from the appearance of the neighborhood. (Special Ord. No. 85, 1994, § 1, 1305.01 (a), 12-8-94)

Sec. 6-96 Garbage and Trash Regulations.

a. It shall be unlawful for the owner, occupant, or lessee of any lot or parcel of lot or parcel of real estate within the corporate limits of the city to allow, suffer, or permit any garbage, trash, rank vegetation, or other waste substance to be deposited on, grown on, or remain on any said lot, parcel of lot or parcel of real estate. (See § 2-140 of this *Code*) (Special Ord. No. 85, 1994, § 1, 1305.01 (b), 12-8-94)

b. It shall be the responsibility of the owner, occupant, or lessee of any building, structure, or property in the City, where garbage or trash is generated or exists to provide or cause to be provided, and at all times to keep or cause to be kept portable containers, receptacles or dumpsters for holding garbage and trash.

All residential garbage and trash to be deposited in such containers, receptacles or dumpsters shall be sacked in a plastic type bags or boxes. Each such container shall have handles and lids of such size, type, and construction as to be secure and readily and conveniently emptied and handled by collectors. There shall be an appropriate number of containers to hold all garbage and trash plastic type bags or boxes. In the alternative garbage and trash but not held in a container as provided herein shall be limited to being set out for pick up no earlier than the night

¹¹⁴ *I.C.* § 13-7-1-11 defines “garbage” and *I.C.* § 13-7-1-9, defines “disposal.”

before the scheduled pick up and shall be sacked in plastic type bags or boxes closed and tightly secured.

All commercial and industrial garbage and trash shall be deposited in a dumpster of such size, type, and construction to be secure and readily and conveniently emptied and handled by collectors. There shall be an appropriate number of dumpsters having properly fitted lids or coverings to hold all garbage and trash. (Gen. Ord. No. 3, 2002, 3-14-02).

c. The provisions of this Section shall apply to all single and multiple residential units and commercial and industrial properties. (Gen. Ord. No. 3, 2002, 3-14-02)

Sec. 6-97 Nuisances.

Whenever and wherever garbage, trash, rank vegetation, or other waste substances shall exist, covering or partly covering the surface of any lot or parcel of lot or parcel of real estate within the corporate City, the same shall be deemed a nuisance and a violation. (Special Ord. No. 85, 1994, § 1, 1305.01 I, 12-8-94)

Sec. 6-98 Enforcement.

It shall be the duty of the Department of Building and Inspections to enforce this Division. (Special Ord. No. 85, 1994, § 1, 1305.01 (d), 12-8-94)

Sec. 6-99 Penalties.

a. Any person violating any provision of this Article shall upon conviction thereof be fined in an amount not to exceed Three Hundred Dollars (\$300.00). Each day such violation is committed or is permitted to continue shall constitute a separate offense and shall be punishable as such hereunder. (Gen. Ord. No. 16, 2002, 8-8-02)

b. For any person failing to abate weeds or rank vegetation, see Sec. 6-168 through Sec. 6-174. (Gen. Ord. No. 24, 2001, 12-13-01)

Sec. 6-100 Notice To Abate, Warning Citations.

It shall be the duty of the Department of Building and Inspections to inspect from time to time the various lots or parcels of real estate lying within the corporate limits of the City, and if it is found that garbage, trash, rank vegetation or other waste substances are permitted to be deposited on, grown on, or remain on such lots or parcels of lots or parcels of real estate, it shall be its duty to ascertain the names of the owners, occupants, or lessee of said property. Upon investigation and evaluation of the severity of the violation by the Department of Building and Inspections, the Department of Building and Inspections may do one of the following:

a. Issue a warning citation to the owner, occupant, or lessee of said property that is in violation of local ordinance provisions. The warning will allow the owner, occupant, or lessee of the property in violation seven (7) days to bring the property into compliance with local

ordinance provisions. If after the seven (7) day period the property is still not in compliance with local provisions, the Department of Building and Inspection may then issue a citation to the owner, occupant, or lessee of said property in violation.

b. Immediately issue a citation to the owner, occupant, or lessee of said property that is in violation of local ordinance provisions. (Special Ord. No. 85, 1994, § 1, (1305.02), 12-8-94)

Sec. 6-101 Burning Garbage, Trash, Leaves Prohibited.

a. The burning of trash, garbage, refuse or waste materials or waste substance within the City of Terre Haute, Indiana is declared to be a nuisance and is prohibited.

b. The burning of leaves in the City of Terre Haute, Indiana is declared to be a nuisance and is prohibited.

c. It shall be the duty of the Terre Haute Police Department or the Terre Haute Bureau of Fire Prevention to enforce this Section.

d. For any person violating the provisions of this Section, the penalty for the first offense in any twelve (12) month period shall be as provided by the Ordinance Violation Bureau (See § 2-140 of this *Code*). All second and subsequent offenses in any twelve (12) month period are subject to enforcement through the judicial system as provided by State statute and local ordinance. (Special Ord. No. 85, 1994, § 1, 1305.04, 12-8-94)

Sec. 6-102 Prohibited Acts Regarding Garbage.

No person shall throw, cast or deposit any garbage in or about any building structure or premises or upon any public street, alley or public place within the City. No person shall deposit any substance or thing other than garbage into any garbage receptacle. Violation of this act shall be an infraction. For any person violating the provisions of this Section, the penalty for the first offense in any twelve (12) month period is subject to enforcement through the judicial system as provided by State statute and local ordinance. (Special Ord. No. 85, 1994, § 1, (907.04), 12-8-94)

Sec. 6-103 Illegal Dumping.

a. It shall be a violation of this Division for any person to throw, cast, discharge, dump, place, deposit, place, leave, cause to be thrown, discharged, dumped, deposited, placed or left on any City-owned or maintained property any waste, paper, ashes, glass, cans, dirt, tree toppings, leaves, weeds, grass, discarded furniture, appliances, organic household waste, animal remains, rubbish, waste, garbage, refuse, and trash.

b. Anyone found to be in violation of this provision shall be subject to the penalties contained in Sec. 6-99 and be responsible for any charges associated with the clean-up of the illegally dumped items. (Gen. Ord. No. 8, 1998, § 525.08, 5-15-98)

Division III. Smoking in Public Places.

Sec. 6-104 Definitions.

As used in this Chapter, the following have the following meanings unless otherwise designated:

- a. **Bar.** Any establishment used primarily for the sale of alcoholic beverages for consumption by guests on the premises and in which the sale of food is merely incidental to the sale of alcoholic beverages, including but not limited to taverns, nightclubs, and cocktail lounges.
- b. **Person.** Any individual, firm, partnership, association, corporation, company or organization of any kind.
- c. **Restaurant.** Any establishment used as or held out to the public as having food available for payment to be consumed on the premises, including coffee shops, cafeterias, cafes, luncheonettes sandwich stands and soda fountains. The term “restaurant” shall include a bar area within the restaurant.
- d. **Theater.** Any enclosed facility, open to the public, which is primarily used for or designed for the purpose of exhibiting any motion picture, stage drama, musical recital, dance, lecture or other similar performance.
- e. **Smoke or Smoking.** The act of lighting, carrying, inhaling from, or leaving a lighted or smoldering cigar, cigarette, or pipe of any kind.
- f. **Public Place.** Any enclosed area used by the general public, including, but not limited to, retail stores and financial institutions, department stores, banks, emix omats and beauty and barber shops, retail food production and marketing establishments, retail service establishments, and other commercial establishments, regardless of whether a fee is charged for admission to the place.
- g. **Enclosed Area.** All space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.
- h. **Place of Employment.** Any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to, work areas, private offices, employee lounges and restrooms, conference and class rooms, employee cafeterias and hallways.
- i. **Retail Tobacco Store.** Retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental. The term does not include retail stores where food or beverages are sold for consumption on the premises or where an area has been set-aside on the premises for customers to consume food or beverages.

j. **Health Care Facility.** An office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill.

k. **Service Line.** An indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

l. **Shopping Mall.** An enclosed public walkway or hall area that serves to connect retail or professional establishments.

m. **Sports Arena.** Sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events. (Gen. Ord. No. 19, 2010, 1-13-11; Effective 7-1-12)

Sec. 6-105 Application to City-Owned Facilities

All enclosed facilities, including buildings and vehicles owned, leased, or operated by the City of Terre Haute, shall be subject to the provisions of this Chapter. (Gen. Ord. No. 19, 2010, 1-13-11; Effective 7-1-12)

Sec. 6-106 Smoking Prohibited in Public Places.

Smoking shall be prohibited in all enclosed public places within the City of Terre Haute, including but not limited to, the following places:

- a. Aquariums, galleries, libraries, and museums.
- b. Areas available to and customarily used by the general public in businesses and nonprofit entities patronized by the public, including but not limited to, professional offices, banks, restaurants, hotels, and motels.
- c. Bars.
- d. Bingo facilities.
- e. Convention facilities.
- f. Elevators.
- g. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
- h. Health care facilities.

- i. Licensed childcare and adult day care facilities.
- j. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- k. Polling places.
- l. Public transportation facilities, including buses and taxicabs, under the authority of the City of Terre Haute, and ticket, boarding, and waiting areas of public transit depots.
- m. Restaurants.
- n. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- o. Retail stores.
- p. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City of Terre Haute or a political subdivision of the State when a public meeting is in progress, to the extent the place is subject to the jurisdiction of the City of Terre Haute.
- q. Schools.
- r. Service lines.
- s. Shopping malls.
- t. Sports arenas, including enclosed places in outdoor arenas. (Gen. Ord. No. 19, 2010, 1-13-11; Effective 7-1-12)

Sec. 6-107 Prohibition of Smoking in Places of Employment.

Smoking shall be prohibited in all enclosed areas within places of employment. This includes, but is not limited to, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities. (Gen. Ord. No. 19, 2010, 1-13-11; Effective 7-1-12)

Sec. 6-108 Reasonable Distance.

Smoking shall be prohibited within a reasonable distance from an enclosed area where smoking is prohibited by this Chapter, so as to ensure tobacco smoke does not enter into establishments designated as smokefree under this Chapter through entrances, windows, ventilation intakes or other means. (Gen. Ord. No. 19, 2010, 1-13-11; Effective 7-1-12)

Sec. 6-109 Where Smoking Is Not Regulated.

The prohibitions of Sec. 6-106 shall not apply to the following:

- a. Private residences, except when used as a licensed childcare, adult day care, or health care facility.
- b. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided however, that not more than twenty percent (20%) 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.
- c. Retail tobacco stores; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Chapter.
- d. Outdoor areas of places of employment. (Gen. Ord. No. 19, 2010, 1-13-11; Effective 7-1-12)

Sec. 6-110 Declaration of Establishment as Nonsmoking.

Notwithstanding any other provision of this Chapter, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Sec. 6-111 is posted. (Gen. Ord. No. 19, 2010, 1-13-11; Effective 7-1-12)

Sec. 6-111 Posting of Signs.

Every public place and place of employment where smoking is prohibited by this Chapter shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited. (Gen. Ord. No. 19, 2010, 1-13-11; Effective 7-1-12)

Sec. 6-112 Enforcement.

- a. This Chapter shall be enforced by the City of Terre Haute Police Department and City of Terre Haute Code Enforcement or an authorized designee.
- b. Any citizen who desires to register a complaint under this Chapter may initiate enforcement with the City of Terre Haute Police Department.

c. The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Chapter.

d. An owner, manager, operator, or employee of an establishment regulated by this Chapter shall inform persons violating this Article of the appropriate provisions thereof. (Gen. Ord. No. 19, 2010, 1-13-11; Effective 7-1-12)

Sec. 6-113 Violations and Penalties.

a. A person who smokes in an area where smoking is prohibited by the provisions of this Chapter shall be guilty of an ordinance violation, punishable by a fine not exceeding Fifty Dollars (\$50.00).

b. A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Chapter shall be guilty of an ordinance violation, punishable by:

(1) A fine not to exceed One Hundred Dollars (\$100.00) for a first violation in a calendar year.

(2) A fine not to exceed Two Hundred Dollars (\$200.00) for a second violation within a calendar year.

(3) A fine not to exceed Five Hundred Dollars (\$500.00) for each additional subsequent violation within a calendar year.

c. Each day on which a violation of this Chapter occurs shall be considered a separate and distinct violation. (Gen. Ord. No. 19, 2010, 1-13-11; Effective 7-1-12)

Sec. 6-114 Non-retaliation.

No person or employers shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer exercises any right to a smoke-free environment afforded by this Chapter. (Gen. Ord. No. 19, 2010, 1-13-11; Effective 7-1-12)

Sec. 6-115 Other Applicable Laws.

This Chapter shall not be interpreted to permit smoking where it is otherwise restricted by other applicable laws or to supersede any local laws which are more restrictive. (Gen. Ord. No. 19, 2010, 1-13-11; Effective 7-1-12)

Sec. 6-116 Chapter To Be Broadly Interpreted.

This Chapter shall be construed broadly to effectuate the purposes described in the preamble of the creating ordinance. (Gen. Ord. No. 19, 2010, 1-13-11; Effective 7-1-12)

Division IV. Miscellaneous Public Safety Regulations.

Sec. 6-120 Spitting in Public Places.

No person shall spit upon any sidewalk within the City, or upon the floors, step, or entrance of any car or public conveyance, or upon the floor, steps, entrance or platform of any theater, hall, place of amusement, church, office, club, store, hotel or other public place or public building within the City. (1989 *Terre Municipal Code*, § 1305.05)

Sec. 6-121 Reserved for Future Use. (Deleted by Gen. Ord. No. 19, 2004, As Amended, 8-12-04)

Sec. 6-122 Trick-or-Treating Curfew Regulations.¹¹⁵

a. Door-to-door trick-or-treating in residential or neighborhood areas within the city limits of Terre Haute, Indiana, shall be two (2) days only; the day before Halloween and Halloween day. Trick-or-Treating will end with a curfew at 9 o'clock p.m. both days. (Special Ord. No. 67, 1980, § 1, 10-9-80, *Journal of Common Council*, pp. 373-374)

b. Any person violating any provision of this Section shall be fined not more than Three Hundred Dollars (\$300.00). (Special Ord. No. 67, 1980, § 2, 10-9-80, *Journal of Common Council*, pp. 373-374)

Sec. 6-123 Light and Noise Nuisance.¹¹⁶

a. It shall be a violation of this Section for any person to cause or permit any nuisance or annoyance to any person in the City of Terre Haute, Indiana by use of noise or light, or any sound or light emitting device, mechanism or thing.

b. It shall be a violation of this Section for any parent of any person under the age of eighteen (18) years, or the guardian or person charged with, or having custody of, any such person under the age of eighteen (18) years to cause or permit a nuisance or annoyance to any person in the City of Terre Haute, Indiana, by means of noise or lights and the use of any device, mechanism or thing emitting annoying and nuisance sounds or lights.

c. For any person violating the provisions of this Section, the penalty for the first offense in any twelve (12) month period shall be as provided by the Ordinance Violation Bureau (See Sec. 2-140 *et seq.*). All second and subsequent offenses in any twelve (12) month period are subject to enforcement through the judicial system as provided by state statute and local ordinance. (Special Ord. No. 85, 1994, § 1, (525.07), 12-8-94)

¹¹⁵ I.C. § 31-6-4-2, authorizes curfew regulations.

¹¹⁶ I.C. § 36-8-2-8, authorizes the regulation of sound.

Sec. 6-124 Abandoned Refrigerators.

a. No person shall leave outside of any building or dwelling in a place accessible to children any abandoned or unattended icebox, refrigerator or any other container of any kind which has a door or lock which may not be released for opening from the inside of the icebox, refrigerator or container.

b. No person shall leave outside of any building or dwelling in a place accessible to children any abandoned or unattended icebox, refrigerator or any other container of any kind which has a snap-lock or other device thereon without first removing the snap-lock or door from the icebox, refrigerator or container. Any such icebox, refrigerator or other container so found shall be impounded by any police officer, pending trial of the person last in possession thereof. (Gen. Ord. No. 2, 2004, 3-11-04)

Sec. 6-125 through Sec. 6-129 Reserved for Future Use.

ARTICLE 6. DISTURBING THE PEACE.

Sec. 6-130 Obstruction of Traffic.

a. No person shall without good cause obstruct vehicular or pedestrian traffic and the same is declared a public nuisance.

b. A violation of this Section shall subject the violator to a fine of not more than Three Hundred Dollars (\$300.00) per incident. (Gen. Ord. No. 27, 2001, 1-10-02)

Sec. 6-131 Amplifying Devices in Vehicles.

a. The operation or use of amplifying or broadcasting devices for advertising purposes in vehicles upon or over the streets within the City is declared unlawful, and the same is declared to be a public nuisance.

b. No operator of any vehicle shall operate the same upon or over the streets when such vehicle is being used in broadcasting, amplifying or calling attention to advertising matter.

c. A violation of this Section shall subject the violator to a fine of not more than Three Hundred Dollars (\$300.00) per incident. (Gen. Ord. No. 27, 2001, 1-10-02)

Sec. 6-132 through Sec. 6-137 Reserved for Future Use.

ARTICLE 7. OBSTRUCTIONS TO STREETS AND SIDEWALKS.

Sec. 6-138 Obstructing Streets or Sidewalks Prohibited.¹¹⁷

a. The owner of a restaurant or dining service establishment may not utilize the sidewalk area immediately abutting the retail business for the purpose of engaging in the sale of food or beverage unless a permit is first obtained from the Board of Public Works and Safety. The applicant shall submit to the Board of Public Works and Safety an application, to include a written request specifying the intended use, a diagram of the sidewalk area and such other information requested by the Board of Public Works and Safety. The Board of Public Works and Safety may issue a permit approving such use of the sidewalk area if the Board of Public Works and Safety finds that the proposed use is consistent with standards established by the Board of Public Works and Safety.

b. No person shall obstruct any part of a street, sidewalk or alley within the City by placing thereon:

(1) Any stand or other structure for the display or sale of goods, wares, or merchandise, except with approval of the Board of the Works and Safety;

(2) Any machine used to vend any goods, wares, or merchandise or to provide amusement or music;

(3) Any goods, wares, or merchandise for the purpose of display or sale;

(4) Any building materials, unless a permit is obtained from the Board of Public Works and Safety;

(5) Any rubbish, garbage, trash, glass, or litter of any kind or description;

(6) Any barrels, crates, or boxes, except when loading or unloading a vehicle;

(7) Any coal, wood, or other fuel except when delivering same to any building. (Gen. Ord. No. 8, 1995, § 1, 10-12-95)

Sec. 6-139 Damaging Streets and Sidewalks Prohibited.

No person shall intentionally destroy, injure, damage, or deface any street, sidewalk, or alley. (*1989 Terre Haute Municipal Code*, § 517.02)

Sec. 6-140 Excavations and Obstructions; Barriers Required.

No person shall leave any excavation or any obstruction of any kind or nature within or upon any part of any sidewalk, street, alley or public place, unless the same shall be surrounded by sufficient barriers, and the location thereof distinctly marked by lights placed and maintained

¹¹⁷ *I.C.* § 36-1-3-2, grants cities all powers that are needed for the effective operation of government as to local affairs.

through the night, in such a way and in such manner as to effectually prevent any accident. (1989 *Terre Haute Municipal Code*, § 517.03)

Sec. 6-141 Removal of Barricades.

a. Whenever the Street Department of Terre Haute is in the process of repaving or repairing or otherwise performing maintenance tasks on streets and alleys in the City of Terre Haute, they shall be empowered to place distinctly marked barricades to direct or restrict the flow of traffic around the working area.

b. It shall be unlawful for any person to move such a barricade and for any person to operate a motor vehicle on any area of a street or alley protected by such a barricade.

c. The Terre Haute City Police Department is empowered to issue summonses or notices to appear in Court upon observing said violations. Violators are subject to the penalties enunciated in Sec. 2-140. (Gen. Ord. No. 2, 1979, 1989 *Terre Haute Municipal Code*, § 517.09)

Sec. 6-142 Removal of Snow and Ice from Sidewalks Required.

It shall be the duty of the owner of each and every retail commercial or industrial business establishment or enterprise in the City abutting upon any sidewalk to keep such sidewalk abutting his premises free and clear of snow and ice, and to remove therefrom all snow and ice accumulated thereon within a reasonable time, which time will ordinarily not exceed twelve (12) hours after the abatement of any storm during which the snow and ice may have accumulated. (1989 *Terre Haute Municipal Code*, § 517.04)

Sec. 6-143 Downspouts Not To Be Obstructions; Abatement.

a. No person shall erect, build, have, or maintain any downspout, or any other device for the purpose of carrying off or discharging rain water or any other fluids, which will discharge such rain water or other fluids on, over, upon, or across any sidewalk or pavement in the City.

b. Any such downspout or other device now built or maintained contrary to the provisions of this Section shall be removed within thirty (30) days after the owner or maintainer thereof shall have written notice from the Board of Public Works and Safety of the City to remove the same. The failure of any such person to so make such removal shall constitute an ordinance violation. (1989 *Terre Haute Municipal Code*, § 517.06)

Sec. 6-144 Overhanging Trees and Stumps Near Sidewalks.

a. No owner or occupant of any lot or tract of land fronting on any street shall allow the branches or foliage of any trees growing upon such lot or tract of land or upon the sidewalk in front thereof or adjacent thereto to hang down below a distance of eight feet (8') above the surface of the sidewalk.

b. No owner or occupant of any lot or tract of land fronting on any street shall allow the stump of any tree to project above the surface of the ground between the property line and the curb line within that part of the sidewalk abutting upon such lot or tract of land. (1989 *Terre Haute Municipal Code*, § 517.07)

Sec. 6-145 Conveyance of Loose Materials on Public Place..

a. **Public Place.** Shall mean and include any and all streets, boulevards, avenues, lanes, alleys or other public ways, and parks, squares, spaces, plazas, grounds and buildings frequented by the general public, whether publicly or privately owned.

b. Any person who transports in any vehicle or in any other manner upon any public place any loose materials or articles likely to sift, fall, spill, or be blown upon the public place shall not overload the vehicle and shall cover the contents or shall convey the contents in tightly secured or covered boxes or containers. In case any of the contents thereof shall be blown, be spilled, fall, or become scattered in any public place, such person shall cause all fallen substances to be immediately gathered up and removed. It shall be a violation of this Section to cause or allow such loose material or articles to be blown, be spilled, fall or become scattered upon the public place. (1989 *Terre Haute Municipal Code*, § 517.08)

Sec. 6-146 and Sec. 6-147 Reserved for Future Use.

ARTICLE 8. WEAPONS.¹¹⁸

Sec. 6-148 Definitions.

a. **Air Gun.** Any gun or device, by whatever name known, which is designed to expel or propel a projectile, pellet or missile, leaden or otherwise, by the action of compressed air, gas, or by the action of a spring or elastic, but shall not mean a firearm.

b. **Slingshot.** Any device, by whatever name known, which is designed to support stones, pellets, or missiles, and by hand, hurling, throwing and flinging the same by stretching and releasing elastic. (1989 *Terre Haute Municipal Code*, § 519.01)

Sec. 6-149 Shooting Prohibited.

a. No person, regardless of age, shall shoot within the City any gun commonly known as an airgun or any type of mechanical gun that shoots, expels or propels pellets, missiles or projectiles, leaden or otherwise. No person shall hurl, throw or fling missiles, pellets or stones by means of a slingshot. (1989 *Terre Haute Municipal Code*, § 519.02)

¹¹⁸ *I.C.* § 36-47-11-1, *et seq.*, address the local regulation of firearms.

b. The Board of Public Works and Safety may permit the discharge of certain weapons within the Airport Operations Area for the protection of the public good and welfare upon appropriate application and compliance with the following conditions:

1. Request for permit must be in writing and submitted to the Board of Public Works and Safety.

2. A request for a permit to discharge a weapon within the Airport Operations Area shall:

a. State the date(s) for which the permission is requested;

b. Identify the type of weapon(s) to be used;

c. Identify the specific location for which the authorization is requested;

d. State the name, address and date of birth of each individual requesting permission;

e. State the purpose of the request; and

f. Supply copies of any applicable federal, state or local agency permits or licenses.

3. Failure to provide required information or to provide false information shall be grounds for immediate denial of permit.

4. The Chief of Police shall within fourteen (14) days after written request for permit, provide a copy of a criminal history check of each individual who will be authorized to discharge a weapon within the Airport Operations Area for the protection of the public good and welfare. The Board reserves the right to deny a permit for specific individuals based on the results of the criminal history check.

5. After proper request has been made pursuant to this Section, the Board in its sole discretion, shall vote to approve, modify or deny such request at a public meeting. If the request is denied, the applicant must wait one (1) year from the date of denial to reapply for the permit.

6. No permit granted pursuant to this Section shall be transferable.

7. Each permitted individual shall comply at all times with all statutes, ordinances and regulations relating to the discharge and ownership of weapons.

8. The Board may, and is authorized to, suspend or revoke a permit issued hereunder for failure of permittee or its authorized individuals to comply and to maintain compliance with the requirements of this Section, or of regulations promulgated hereunder.

g. The provisions of this Section shall in no way prohibit persons authorized or required by their employment or office to discharge blank ammunition for signal purposes at athletic or sporting events, or as part of a military or law enforcement ceremony. (Gen. Ord. No. 23, 2007, As Amended, 1-10-08)

h. Authorized, active and retired law enforcement officers, as defined by I.C. § 9-13-2-92, participating in training exercises at the City of Terre Haute Emergency Responder Training Academy (ERTA) firing range, shall be permitted to discharge firearms approved by ERTA staff. Such training exercise shall only be conducted in accordance with rules and regulations and during hours designated by the ERTA. (Gen. Ord. No. 10, As Amended, 7-8-10)

Sec. 6-150 Weapons Prohibited for Minors.

No person under the age of sixteen (16) years shall carry any air gun or slingshot on the streets, alleys, public roads or public places within the City unless accompanied by an adult, parent or guardian. (1989 Terre Haute Municipal Code, § 519.03)

Sec. 6-151 Parental Responsibility.

No parent or guardian of any child under the age of sixteen (16) years shall knowingly permit any such child to violate this Article. (1989 Terre Haute Municipal Code, § 519.04)

Sec. 6-152 Exceptions.

Any person under sixteen (16) years of age may have in his possession any of the articles mentioned in Sec. 6-149 of this Article if:

- a. Kept within his domicile;
- b. Used by the person under sixteen (16) years of age and he is a duly enrolled member of any club, team or society organized for educational purposes and maintaining as part of its facilities or having written permission to use an indoor or outdoor target range under the supervision, guidance and instruction of a responsible adult;
- c. Used in or on any private grounds or residence under circumstances when such an article designated in Sec. 6-149 can be fired, discharged or operated in such a manner as not to endanger persons or property and also in such a manner as to prevent the projectile transversing any grounds or space outside the limits of such grounds or residence;
- d. Carried unloaded and in a suitable case or securely wrapped. (1989 Terre Haute Municipal Code, § 519.05)

Sec. 6-153 through Sec. 6-155 Reserved for Future Use.

ARTICLE 9. PROPERTY REGULATIONS.

Sec. 6-156 Inflict Damage upon Property.

It shall be a violation of this Article for any person within the City of Terre Haute, Indiana to intentionally, willfully or maliciously inflict damage upon any real, personal or mixed property within the City of Terre Haute of any person, firm, association, corporation, the State of Indiana and its political subdivisions, including but without being limited to the City of Terre Haute, Indiana. (Special Ord. No. 36, 1970, *1989 Terre Haute Municipal Code*, § 525.01)

Sec. 6-157 Cause Damage to Property.

It shall be a violation of this Article for any person to cause damage or destruction of any real, personal or mixed property within the City of Terre Haute, Indiana of any person, firm, association, corporation, the State of Indiana and its political subdivision, including but without being limited to the City of Terre Haute, Indiana. (*1989 Terre Haute Municipal Code*, § 525.02)

Sec. 6-158 Enter onto Property To Inflict Damage.

It shall be a violation of this Article for any person to enter onto the property of any person, firm, association, corporation, or the State of Indiana and its political subdivisions, including but without being limited to the property of the City of Terre Haute, Indiana, for the purpose of inflicting any damage to or causing the destruction of such property, or personal or mixed property thereon, or placing on such property any litter, debris, junk, refuse or material which causes such property to be and become littered or in any way defaced, or which causes such property, or property thereon, to be made unsightly. (*1989 Terre Haute Municipal Code*, § 525.03)

Sec. 6-159 Penalty.

Unless otherwise provided any person violating any of the provisions of this Article shall be fined not less than Three Hundred Dollars (\$300.00) for each offense thereunder and not more than Two Thousand Five Hundred Dollars (\$2,500.00). (Special Ord. No. 85, 1994, § 1, (525.99), 12-8-94)

Sec. 6-160 Maintenance of Right-of-Way

The Owner of each lot abutting a City street shall maintain the surface area from the edge of the Owner's property to the edge of the roadway. (Edge of the roadway in this instance shall mean the lotside face of curb and gutter or the lotside edge of shoulder.) The maintenance shall be limited to normal lot or yard maintenance which includes maintenance or removal of vegetation, garbage, trash and waste substances and the undertaking of protective measures to prevent or check erosion. This does not give lot owners authority to alter or block drainage elements. Also, Owners shall maintain the surface area from the property line to the center of any alley abutting the property. The alley maintenance shall be limited to normal lot or yard maintenance which includes maintenance or removal of vegetation, garbage, trash and waste substances. (Gen. Ord. No. 20, 2001, 11-8-01)

Sec. 6-161 Reserved for Future Use.

ARTICLE 10. SPECIFIC NOISE REGULATIONS.

Sec. 6-162 Public Purpose Declared.

It is found and declared that:

a. The making and creation of loud, unnecessary or unusual noises within the limits of the City of Terre Haute is a condition which has existed for some time and the extent and volume of such noises is increasing;

b. The making, creation or maintenance of such loud, unnecessary, unnatural or unusual noises which are prolonged, unusual and unnatural in their time, place and use affect and are a detriment to public health, comfort, convenience, safety, welfare and prosperity of the residents of the City of Terre Haute; and

c. The necessity in the public interest for the provisions and prohibitions hereinafter contained and enacted, is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the City of Terre Haute and its inhabitants. (Gen. Ord. No. 8, 1948, § 1, 1-3-49, *Journal of Common Council*, pp. 7-10)

Sec. 6-163 Unnecessary Noises Prohibited.

It shall be unlawful for any person to make, continue, or cause to be made or continued any loud, unnecessary or unusual noises or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others, within the limits of the City of Terre Haute. (Gen. Ord. No. 8, 1948, § 2, 1-3-49, *Journal of Common Council*, pp. 7-10)

Sec. 6-164 Violations Declared.

The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this Article, but said enumeration shall not be deemed to be exclusive, namely:

a. **Horns, Signaling Devices, etc.** The sounding of any horn or signaling device on any automobile, motorcycle, street car or other vehicle on any street or public place of the City, except as a danger warning; the creation by means of any such signaling device of any unreasonably loud or harsh sound; and the sounding of any such device for an unnecessary and unreasonable period of time. The use of any signaling device except one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust; and the use of any such signaling device when traffic is for any reason held up.

b. **Radios, Phonographs, etc.** The using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such a manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto. The operation of any such set, instrument, phonograph, machine or device between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of fifty feet (50') from the building, structure or vehicle in which it is located shall be *prima facie* evidence of a violation of this Article.

c. **Loud Speakers, Amplifiers for Advertising.** The using, operating or permitting to be played/used, or operated of any radio receiving set, musical instrument, phonograph, loud speaker, sound amplifier, or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure.

d. **Yelling, Shouting, etc.** Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 11:00 p.m. and 7:00 a.m. or at any time or place so as to annoy or disturb the quiet, comfort, or repose of persons in any office, or in any dwelling, hotel or other type of residence, or of any persons in the vicinity.

e. **Animals, Birds, etc.** The keeping of any animal or bird which by causing frequent or long continued noise shall disturb the comfort or repose of any persons in the vicinity.

f. **Steam Whistles.** The blowing of any locomotive steam whistle or steam whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of fire or danger, or upon request prevent loud or explosive noises therefrom.

g. **Defect in Vehicle or Load.** The use of any automobile, motorcycle, or vehicle so out of repair, so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noise.

h. **Loading, Unloading, Opening Boxes.** The creation of a loud and excessive noise in connection with loading or unloading any vehicle or the opening and destruction of bales, boxes, crates, and containers.

i. **Schools, Courts, Churches, Hospitals.** The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court while the same are in use, or adjacent to any hospital, which unreasonably interferes with the working of such institution, or which disturbs or unduly annoys patients in the hospital, provided conspicuous signs are displayed in such streets indicating that the same is a school, hospital or court, street.

j. **Hawkers, Peddlers.** The shouting and crying of peddlers, hawkers, and vendors which disturbs the peace and quiet of the neighborhood.

k. **Drums.** The use of any drum or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale.

l. **Metal Rails, Pillars, and Columns, Transportation Thereof.** The transportation of rails, pillars, or columns of iron, steel or other material, over and along streets and other public places upon carts, drays, cars, trucks, or in any other manner so loaded as to cause loud noises or as to disturb the peace and quiet of such streets or other public places.

m. **Pile Drivers, Hammers, etc.** The operation between the hours of 10:00 p.m. and 7:00 a.m. of any pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist or other appliance, the use of which is attended by loud or unusual noise. (Gen. Ord. No. 8, 1948, 1-3-49, *Journal of Common Council*, pp. 7-10)

Sec. 6-165 Penalties.

Any person who violates any provision of this Article shall be fined as set forth in the chart subject to payment through the Ordinance Violation Bureau. (Gen. Ord. No. 8, 1948, § 4, 1-3-49; *Journal of Common Council*, pp. 7-10)

Sec. 6-166 Noise from Vehicles.

a. It shall be a violation of this Article for any person to cause, allow or permit noise, music, and sounds from radios, stereos, and amplifiers, to be audible from ten feet (10') of a moving or stationary vehicle.

b. For any person violating the provisions of this Section, the penalty for the first offense in any twelve (12) month period shall be as provided by the Ordinance Violation Bureau (See § 2-140 of this *Code*). All second and subsequent offenses in any twelve (12) month period are subject to enforcement through the judicial system as provided by state statute and local ordinance. (Gen. Ord. No. 13, 1998, § 1, 9-10-98)

Sec. 6-167 Reserved for Future Use.

ARTICLE 11. WEEDS, GRASS AND RANK VEGETATION CONTROL.¹¹⁹

Sec. 6-168 Title.

This Article shall be known and may be cited as the “Terre Haute Weed, Grass and Rank Vegetation Control Ordinance”. (Gen. Ord. No. 24, 2001, 12-13-01)

¹¹⁹ *I.C.* § 36-7-10.1-3, authorizes the City to remove weeds and rank vegetation and to collect monies for the same.

Sec. 6-169 Definitions.

Lot or Parcel of Lot or Parcel of Real Estate. Shall be included in addition to those grounds within their respective boundaries of all of the grounds lying to the center of the street or alley or alleys where said street or alley is not improved. The word weed as herein used shall include specifically the following rank and uncultivated growth or matter:

amaranthus retroflexus (rough green pigweed)
ambrosia elatior (common ragweed)
ambrosia trifida (giant ragweed)
arctium minus (burdock)
bidens grondosa (beggarticks)
cannabis cativa (marijuana)
chenopodium album (lambs quarter)
cirsium arvense (common thistle)
concoluvuls, all species (bindweed)
emix, all species (docks)
rhus radicans (poison ivy)
solanum carolinense (horse nettle)
sonchus arvensis (saw thistle)
xanthium pennsylvanicum (cocklebur)

Removing grass and/or weeds. The elimination of said grass and/or weeds by cutting, spraying or other effective means.

Rank Vegetation. Shall have the meaning set out in Sec. 6-95 d. (Gen. Ord. No. 24, 2001, 12-13-01).

Sec. 6-170 Weeds, Grass and Rank Vegetation; Nuisance.

a. It shall be unlawful for the owner, occupant or lessee of any lot or parcel of lot of real estate within the corporate limits of the City to allow, suffer or permit grass and/or any weeds of any kind to grow or mature upon any such premises to a height of over eight inches (8"). (Gen. Ord. No. 14, 2001, 6-14-01)

b. It shall be the duty of the owner, occupant or lessee of any lot or parcel of lot or parcel of real estate within the corporate limits of the City, to cut grass and/or weeds on such property at least four (4) times between May 1 and October 31 of each calendar year. (Gen. Ord. No. 24, 2001, 12-13-01)

c. Whenever and wherever grass and weeds shall exist of a height of over eight inches (8"), covering or partly covering the surface of any lot or parcel of lot or parcel of real estate within the corporate limits of the city, the same shall be deemed a nuisance and a violation. (Gen. Ord. No. 24, 2001, 12-13-01)

d. It shall be unlawful for the owner, occupant or lessee of any lot or parcel of lot or parcel of real estate within the corporate limits of the City to allow, suffer or permit rank vegetation of any kind to collect or remain upon such premises. (Gen. Ord. No. 24, 2001, 12-13-01)

e. Whenever and wherever rank vegetation shall collect or remain covering or partially covering the surface of any lot or parcel of lot or parcel of real estate within the corporate limits of the City, the same shall be deemed a nuisance and a violation of this Article. (Gen. Ord. No. 24, 2001, 12-13-01)

Sec. 6-171 Notice to Owners.

a. Ten (10) days to abate nuisance – It shall be the duty of the Building Inspector’s Office, Environmental Protection Office (or any designated City Department) to inspect from time to time the various lots or parcels of lots or parcels of real estate lying within the corporate limits of the City, and if it shall find that weeds and/or grass are permitted to grow in violation of this Article, or rank vegetation is permitted to collect or remain on any such lots or parcel of lots or parcel of real estate, it shall be his duty to ascertain the names of the owners, occupants or lessees of said property and to notify such owners, occupants or lessees in writing, that such weeds and/or grass shall be cut and removed or otherwise destroyed, or such rank vegetation shall be removed, within ten (10) days from the date of such notice.

b. Notice shall be sent to the owner of record as the name and address appears on the tax statement from the Treasurer’s Office of Vigo County, by certified mail. If any lot or parcel of lot or parcel of real estate is not occupied or leased, and the owner is a non-resident of the City, or his residence is unknown, or if notice is returned by Postal Department because of its inability to make delivery thereof, the Board of Public Works and Safety shall cause a notice to cut, remove or otherwise destroy the weeds and/or grass and/or rank vegetation to be published in some daily newspaper of general circulation in such city at least one each week for two (2) successive weeks. (Gen. Ord. No. 24, 2001, 12-13-01)

c. Continuous Abatement. If an initial notice of violation and abatement has been issued to the owner of record as provided in Subsection b. above, a continuous notice of abatement may be posted at the property at the time of abatement. This continuous abatement notice serves as notice to the real property owner that each subsequent violation during the same calendar year for which the initial notice of violation was provided may be abated by the City or its contractors and the costs and fees associated with the abatement shall be assessed against the property as provided in Section 6-172 b. (I.C. § 36-7-10.1-3(d)). (Gen. Ord. No. 17, 2012, 11-8-12)

Sec. 6-172 Failure of Owner To Abate Nuisance.

a. If any owner, occupant or lessee of any lot or parcel of lot or parcel of real estate shall fail to cut or remove or otherwise destroy or abate such weeds and/or grass and/or rank vegetation after receiving notice as provided in Sec. 6-171, it shall be the duty of the Board of Public Works and Safety to cause the same to be cut or removed or otherwise destroyed or

abated. When the Board of Public Works and Safety has effected the cutting, removal or destruction or abatement of such nuisance the Board of Public Works and Safety or Department of Redevelopment shall prepare a sworn statement showing the cost of the work performed and it shall bill the owner of record. Such bill shall be due and payable at the time of receiving the statement.

b. Failure of Owner to Pay – If the full amount due the City is not paid by such owner within thirty (30) days after such invoice for the work has been issued, as provided in Sec. 6-172 a., the Board of Public Works and Safety shall certify to the County Auditor a sworn statement showing the cost and expense incurred for the work, date the work was done and the location of the property on which said work was done. The certification of such sworn statement shall constitute a lien and privilege on the property. The amount of the bill shall include any additional administrative costs incurred in the certification. As provided in I.C. § 36-7-10.1-4, the auditor shall place the total amount certified on the tax duplicate for the property affected and the total amount, including any accrued interest, shall be collected as delinquent taxes are collected, all as provided in I.C. § 36-7-10.1. (Gen. Ord. No. 24, 2001, 12-13-01; Gen. Ord. No. 1, 2011, 2-10-11)

Sec. 6-173 Penalties.

Any person violating any of the provisions of this Article shall upon conviction thereof be fined in an amount not exceeding Three Hundred Dollars (\$300.00). Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder. (Gen. Ord. No. 1, 1978, As Amended, § 2, 2-9-78, *Journal of Common Council*, pp. 26-29)

Sec. 6-174 Separability.

If any section, subsection, sentence, clause, phrase, or portion of this Article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof. (Gen. Ord. No. 1, 1978, As Amended, § 7, 2-9-78, *Journal of Common Council*, pp. 26-29)

Sec. 6-175 through Sec. 6-177 Reserved for Future Use.

ARTICLE 12. ABANDONED AND JUNKED VEHICLES.¹²⁰

Sec. 6-178 Definitions.

The following definitions shall apply in the interpretation and enforcement of this Article:

¹²⁰ I.C. § 9-22-1-1, *et seq.*, address abandoned motor vehicles.

a. **Person.** Any person, firm, partnership, association, corporation, company or organization of any kind.

b. **Motor Vehicle.** A machine propelled by mechanical power designed to travel along the ground by use of wheels, treads, runners, or slides, and transports persons or property or pulls machinery and shall include, without limitation, automobiles, trucks, trailers, motorcycles, and tractors.

c. **Street or Highway.** Shall include alleys, and shall mean the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of general travel, both ambulatory and vehicular.

d. **Enforcement Officer.** That employee of the City who shall be appointed by the Mayor of the City to be responsible for the enforcement of this Article.

e. **Inoperative Motor Vehicle.** Any motor vehicle not within an enclosed building, in a non-operating condition, or in a wrecked, damaged, deteriorated, or in a wrecked, damaged, deteriorated, or partially dismantled condition. (Gen. Ord. No. 8, 2001, 4-12-01)

f. **Abandoned and Junked Motor Vehicle.** Any motor vehicle which shall either be in such a deteriorated or destroyed condition as to be unable to be operated safely with due regard to standards set by the State of Indiana for motor vehicle equipment, or shall be permitted to remain unmoved for a longer period than five (5) days on either public or private property so as to permit of the conclusion that the owner or owners thereof have relinquished all right, title and interest in such vehicle, and no longer intend that such vehicle be operated and maintained in operable condition for use as such vehicles are generally employed.

g. **Partially Exempt Real Estate.** Real estate upon which is operated a motor vehicle body shop, repair garage, or service station in an area not in violation of the Zoning Ordinance of the City.

h. **Totally Exempt Real Estate.** Real estate upon which is operated a motor vehicle wrecking yard, salvage yard, or junk yard in an area not in violation of the Zoning Ordinance of the City.

i. **Non-Exempt Real Estate.** All real estate in the City of Terre Haute which is not partially or totally exempt real estate, as defined herein, except streets and highways.

j. **City.** The City of Terre Haute, Indiana. (Gen. Ord. No. 4, 1969, § 1, 7-16-69, *Journal of Common Council*, pp. 145-149)

Sec. 6-179 Abandoned Vehicles Prohibited.

a. It shall be unlawful for any person to abandon any motor vehicle within the City, and no person shall leave any motor vehicle at any place within the City for such time and under such circumstances as to cause such vehicle to reasonably appear to have been abandoned,

junked and inoperable, and in no event, in such condition, for a period exceeding seventy-two (72) hours as is provided herein. (Gen. Ord. No. 8, 2001, 4-12-01)

b. It shall be unlawful for any person to leave, keep, park, store or place any inoperative motor vehicle, or abandoned or junked motor vehicle on any street or highway within the City for more than seventy-two (72) hours. (Gen. Ord. No. 4, 1969, § 3, 7-16-69, *Journal of Common Council*, pp. 145-149; Gen. Ord. No. 8, 2001, 4-12-01)

c. It shall be unlawful for any person being the owner or custodian of an inoperative, abandoned or junk motor vehicle to leave, keep parked, store or place an inoperative, abandoned or junk motor vehicle on any non-exempt real estate in the City for more than seventy-two (72) hours after being properly served with a removal notice. (Gen. Ord. No. 10, 2000, 5-11-00; Gen. Ord. No. 8, 2001, 4-12-01)

d. It shall be unlawful for any person being the owner of non-exempt real estate, or having control of or being in charge of such real estate, to have, permit, or allow an inoperative, abandoned or junk motor vehicle to be, or remain, on said real estate for more than seventy-two (72) hours after being properly served with a removal notice. (Gen. Ord. No. 10, 2000, 5-11-00; Gen. Ord. No. 8, 2001, 4-12-01)

e. It shall be unlawful for the owner, operator, lessee, or manager of a business on partially exempt real estate to place, park, keep, store or cause or permit to be placed, parked, kept, or stored any inoperative, abandoned or junk motor vehicle, or part thereof, on such partially exempt real estate, except and unless said vehicle is awaiting repair parts or service, and then, in that event, the said vehicle shall not be permitted on said real estate for a period of more than sixty (60) days. (Gen. Ord. No. 4, 1969, § 5, 7-16-69, *Journal of Common Council*, pp. 145-149)

Sec. 6-180 Enforcement Procedure.

Whenever the enforcement officer determines that an inoperable, abandoned or junked motor vehicle is upon non-exempt real estate in the City, has been upon a street or highway for more than seventy-two (72) hours, or is unlawfully upon partially exempt real estate he shall prepare and cause to be served a written removal notice directing that said vehicle be removed. (Gen. Ord. No. 8, 2001, 4-12-01)

a. If said vehicle is upon a street or highway, and is not removed within seventy-two (72) hours after service of this notice, then the enforcement officer may cause said vehicle to be removed and disposed of. (Gen. Ord. No. 8, 2001, 4-12-01)

b. If said vehicle is upon non-exempt real estate, or is unlawfully upon partially exempt real estate, and said vehicle is not removed within seventy-two (72) hours after service of said removal notice, the enforcement officer may cause said vehicle to be removed and disposed of for scrap. The proceeds from such disposition, if any, shall first be applied to the expense of said removal and disposition, and any overplus remaining thereafter shall be paid to the owner of said vehicle. The owner of the real estate upon which said vehicle is located shall be responsible

for and pay for any and all expenses pertaining to the removal and disposition of said vehicle, and such expense shall be and constitute a lien upon said real estate. If said expense shall not be paid within thirty (30) days after the removal of said vehicle, the Controller of the City shall certify such a lien to the Auditor and the Treasurer of Vigo County, Indiana, so that the same may be entered on the record by such officials as a lien upon said real estate. (Gen. Ord. No. 10, 2000, 5-11-00; Gen. Ord. No. 8, 2001, 4-12-01)

Sec. 6-181 Service of Notices.

a. Service of a removal notice relating to an inoperable, abandoned or junked motor vehicle located upon a street or highway shall be sufficient if a copy be affixed to said vehicle and a copy mailed by ordinary United States mail to the owner of said vehicle, if said owner be known.

b. Service of a removal notice relating to an inoperable, abandoned or junked motor vehicle on non-exempt property, or unlawfully, on partially exempt property shall be sufficient if:

(1) A copy be affixed to the subject vehicle, and

(2) A copy be left with any responsible person found upon the real estate upon which the subject vehicle is located, or, if no such person be found or if such real estate is unoccupied, then if a copy be posted upon said real estate in a conspicuous place, and

(3) A copy be mailed by ordinary United States mail to each of the following persons, if said persons be known:

(A) The owner of the real estate upon which the subject vehicle is located.

(B) The owner of the subject vehicle.

I Any lienholder claiming a security interest in said vehicle. (Gen. Ord. No. 4, 1969, § 8, 7-16-69, *Journal of Common Council*, pp. 145-149)

Sec. 6-182 Enforcement Officers.

The enforcement officer shall be authorized to enter upon real estate within the City to inspect motor vehicles and to deliver notices under this Article, so long as the enforcement officer has reasonable cause to believe that a violation is being committed, and, furthermore, he shall be authorized to enter upon said real estate for the purpose of removing motor vehicles as hereinbefore provided in this Article; provided, further, that the enforcement officer shall not be authorized to enter an enclosed building in any event. (Gen. Ord. No. 4, 1969, § 9, 7-16-69, *Journal of Common Council*, pp. 145-149)

Sec. 6-183 Penalties.

Any person violating any of the provisions of this Article shall be deemed guilty of an ordinance violation, and upon judgment thereof, shall be fined in an amount not exceeding Three Hundred Dollars (\$300.00) and each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder. (Gen. Ord. No. 10, 2000, 5-11-00; Gen. Ord. No. 15, 2010, 9-9-10)

Sec. 6-184 Towing Contracts.

The officer may enter into towing contracts pursuant to state law and approved by the Board of Public Works and Safety of the City of Terre Haute, Indiana, as necessary for the purpose of removal, storage, and disposition of abandoned vehicles and parts.

(1) The charge payable by the owner or lien holder for towing or removing an abandoned vehicle may not exceed the rate charged by the contract towing service as approved by the Board of Public Works and Safety. (Gen. Ord. No. 10, 2000, 5-11-00)

(2) The charge payable by the owner or lien holder for storing an abandoned vehicle or parts may not exceed the rate charged by the contract towing service as approved by the Board of Public Works and Safety. (Gen. Ord. No. 10, 2000, 5-11-00)

(3) The owner or lien holder of the towed vehicle must provide to the Terre Haute Police Department proof of ownership of said vehicle. Upon appropriate proof of ownership, licensed driver, proof of current insurance, and payment of the Thirty Dollar (\$30.00) release of vehicle fee, the Terre Haute Police Department will provide a "Tow Release" receipt to be provided to the authorized towing service. Ninety percent (90%) of such fees shall be deposited in the Police Continuing Education Fund (See Sec. 2-118). Ten percent (10%) of such fees shall be deposited in the Fire Training Academy Non-Reverting Fund (See Sec. 2-138-6). (Gen. Ord. No. 1, 2012, 2-10-12)

Sec. 6-185 through Sec. 6-188 Reserved for Future Use.

ARTICLE 13. TREE REGULATIONS.

Sec. 6-189 Purpose.

It is the purpose of this Article to assure that existing trees and trees to be planted upon public grounds and public right-of-ways are maintained and preserved to protect their economic, aesthetic, and ecological benefit to the City of Terre Haute and its residents. (Gen. Ord. No. 9, 2002; 5-9-02)

Sec. 6-190 Definitions.

- a. **Municipality/City.** The City of Terre Haute, Indiana, and all of its departments.

b. **City Forester** The city employee assigned to carry out the enforcement of this Article. (Gen. Ord. No. 9, 2002, 5-9-02)

c. **Tree Advisory Board.** That group of residents of the City who are appointed by the Mayor and the City Council to make suggestions and recommendations to the Mayor, City Forester, and other City officials in carrying out the urban forestry program. (Gen. Ord. No. 9, 2002, 5-9-02)

d. **Tree Row.** That ground in the public right-of-way between a curb or a road and a sidewalk, or, where no sidewalk exists, between a curb or road and privately-owned property.

e. **Tree.** A deciduous or conifer woody plant that is characteristically more than twelve feet (12') in height when it reaches full growth and has fewer than six (6) main stems, most often one main stem. (Gen. Ord. No. 9, 2002, 5-9-02)

Sec. 6-191 Appointment and Qualifications of the City Forester.

The City Forester shall:

- a. Be employed by the City of Terre Haute;
- b. Be a person skilled and trained in the arts and science of landscape architecture, urban forestry, municipal arboriculture, or a related field;
- c. Hold a college degree in urban forestry, landscape architecture, horticulture, arboriculture, or other closely related field; and
- d. Have passed the Indiana State Arborist Examining Board examination within two (2) years from the date of appointment. (Gen. Ord. No. 5, 1998, As Amended, § 933.01, 4-17-98)

Sec. 6-192 Authority and Duties of City Forester.

The City Forester shall:

- a. Have the authority to promulgate the rules and regulations of the City Forestry Specifications and Standards governing the planting, maintenance, removal, and pruning of trees, shrubs, and plants upon public grounds and public right-of-ways of the City; and
- b. Regulate and control the planting, care and maintenance, pruning, and removal of all trees in any public area of the City; and
- c. Supervise or inspect as needed all work done under a license issued in accordance with the terms of this Article; and (Gen. Ord. No. 9, 2002, 5-9-02)
- d. Affix reasonable conditions to the granting of a license/permit in accordance with the terms of this Article; and

e. Cause the provisions of this Article to be enforced. In the event that the position of the City Forester becomes vacant, these duties shall be the responsibility of a qualified alternate that shall be designated by the Mayor within a reasonable time not to exceed ninety (90) days. (Gen. Ord. No. 5, 1998, As Amended, 4-17-98; Gen. Ord. No. 9, 2002, 5-9-02)

Sec. 6-193 Urban Forestry Plan.

a. The City Forester shall formulate an Urban Forestry Plan with the advice, hearing, and approval of the Tree Advisory Board.

b. The Urban Forestry Plan shall outline urban forestry program activities for a minimum of the next five (5) years. The plan shall describe:

- (1) The urban forestry activities to be undertaken by the City;
- (2) The reasons for those activities;
- (3) The possible funding sources;
- (4) The means of accomplishing the activities; and

(5) The alternatives available to the City to fund or accomplish the activities. Activities may include but are not limited to street tree inventory, planting, tree removal, tree pruning, beautification projects, and educational projects. (Gen. Ord. No. 5, 1998, As Amended, § 933.04, 4-17-98)

Sec. 6-194 City Forestry Specifications and Standards.

The City Forester, with the assistance of the Tree Advisory Board, shall develop and periodically review and revise, as necessary, the City Forestry Specifications and Standards in accordance with the International Society of Arboricultural Standards. This document shall contain regulations and standards for the planting, maintenance, pruning, and removal of trees planted along and upon public grounds and public right-of-ways. Any changes to the City Forestry Specifications and Standards shall be done by written approval of the City Forester and a majority of the members of the Tree Advisory Board. This document will be made available to the public at the Office of the City Forester. (Gen. Ord. No. 5, 1998, As Amended, § 933.05, 4-17-98)

Sec. 6-195 License.

Any person or entity who derives a principal source of income from the planting, care, maintenance, or removal of trees, directly or indirectly, within the City of Terre Haute, is required to annually secure a license to do so from the City Forester. The license applicant shall:

- a. File with the Board of Public Works and Safety evidence of liability insurance in the minimum amount of \$1,000,000.00 for bodily injury or death and \$100,000.00 for property damage; and
- b. Pay an annual license fee as outlined in Chapter 4, Article 9 of this *Code*; and
- c. Meet the requirements of Chapter 8, Article 5 of this *Code* when working within the public right-of-way; and
- d. Shall provide proof of competences in the practice of tree care.

Failure to comply with any of these requirements may result in the denial or revocation of said license. A copy of the license required herein must be maintained at the location where the licensed activity is performed. (Gen. Ord. No. 9, 2002, 5-9-02)

Sec. 6-196 Permitting.

- a. A permit shall be required of any person or entity wishing to remove a tree within the City right-of-way.
- b. A permit shall be required of any person or entity who derives income from the planting, care, removal of trees, directly or indirectly, whenever tree planting and/or maintenance is to be performed within the City right-of-way.
- c. Applications for permits must be made through the Office of the City Forester before any work is performed. Upon written approval by the City Forester for such work, a right-of-way permit shall be secured in accordance with Chapter 8, Article 5 of this *Code*.
- d. The City Forester shall review each application made and approve or reject said application based upon his or her professional knowledge, the provisions of this Article, and the City Forestry Specifications and Standards. Conditions may be placed upon approval as deemed necessary by the City Forester. Requests for removal of reasonably safe and healthy trees may be denied or may be approved only under the condition that such trees be replaced at the same location or another location as specified by the City Forester.
- e. Whenever it is necessary to remove a tree or trees by the City, the City shall, when reasonably possible, replant such trees or replace them pursuant to the said specifications and standards.
- f. An annual permit shall be issued to public utility companies for pruning or removing any tree located on City-owned property or City right-of-way for the purpose of maintaining safe line clearance. The permit shall be issued upon submission of a pruning and tree removal schedule by the public utility company. All such work shall be carried out in accordance with the adopted City Forestry Specifications and Standards. If adopted City Forestry Specifications and Standards are not followed, the City Forester shall have the right to file a formal complaint with the state utility regulatory agency. Some emergency situations may

exempt public utilities from compliance with the City Forestry Specifications and Standards. (Gen. Ord. No. 9, 2002, 5-9-02))

Sec. 6-197 Prohibited Species.

There are certain species of trees that are detrimental to the City because they have qualities that cause destruction of property and require high maintenance and pose danger to the public safety. For this reason, the species enumerated in the City Forestry Specifications and Standards shall not be planted in public ground or in public right-of-way. (Gen. Ord. No. 5, 1998, As Amended, 4-17-98)

Sec. 6-198 Tree Advisory Board.

a. **Establishment.** There is hereby established and created a City of Terre Haute Tree Advisory Board. Within thirty (30) days after the appointment of the Tree Advisory Board, the same shall meet, organize, and elect a chairperson and appoint the City Forester as secretary.

b. **Membership.**

(1) The City of Terre Haute Tree Advisory Board shall consist of seven (7) members. (Gen. Ord. No. 9, 2002, 5-9-02)

(2) The Mayor shall appoint two (2) members. (Gen. Ord. No. 9, 2002, 5-9-02)

(3) The City Council shall appoint one (1) member. (Gen. Ord. No. 9, 2002, 5-9-02)

(4) The three (3) members, appointed to the Tree Advisory Board by the Mayor of the City of Terre Haute and the City Council, of the board shall be residents of the City. (Gen. Ord. No. 9, 2002, 5-9-02)

(5) The three (3) members, appointed to the Tree Advisory Board by the Mayor and by the City Council shall be persons who have a general knowledge of trees and urban forestry and who have demonstrated concern regarding urban forestry. (Gen. Ord. No. 9, 2002, 5-9-02)

(6) The following shall serve by reason of their office as members of the Tree Advisory Board: the City Forester, the City Engineer, the Superintendent of the Parks and Recreation Department, and the Superintendent of the Street Department. (Gen. Ord. No. 9, 2002, 5-9-02)

c. **Terms of Appointments.** Of the three (3) initially appointed members who are not ex officio, one (1) appointed by the Mayor shall serve for two years, one (1) appointed by the Council shall serve for three (3) years, and one (1) appointed by the Mayor shall serve for four (4) years. When their terms expire, their replacements shall serve four-year terms. Vacancies caused by death, resignation, or other reasons shall be filled for the unexpired term in the same manner as the original appointments were made. (Gen. Ord. No. 9, 2002, 5-9-02)

d. **Duties.** The duties of the Tree Advisory Board, whose members shall serve without fees or salary, shall be:

(1) To study the problems and determine the needs of the City in connection with its tree management plan and to make recommendations concerning the same;

(2) To assist the properly constituted officials of the City and the citizens and residents of the City in the dissemination of news and information regarding the selection, planting, and maintenance of trees within the City, whether the same be on private or public property;

(3) To make such recommendations from time to time to the City Council as to desirable ordinances concerning the tree program and activities for the City;

(4) To provide regular and special meetings at which the subject of trees insofar as it relates to the City may be discussed by members of the Tree Advisory Board, officers and personnel of the City, and others interested in the management plan;

(5) To review, approve or reject, by a majority of the members in writing after discussion with the City Forester, any changes to the City Forestry Specifications and Standards. (Gen. Ord. No. 5, 1998, As Amended, § 933.10, 4-17-98)

Sec. 6-199 Abuse or Mutilation of Public Trees.

Unless specifically authorized by the City Forester, no person shall intentionally damage, mutilate, transplant or remove any tree planted upon public grounds and public right-of-ways. The insertion into trees of metal objects such as nails and spikes shall constitute mutilation. Chaining an animal or object to a tree shall constitute abuse. Any person in violation of this provision shall be subject to the penalties as established in this Article. (Gen. Ord. No. 5, 1998, As Amended, § 933.10, 4-17-98)

Sec. 6-200 Topping Trees.

It shall be unlawful for any person to top any tree located upon public grounds and public right-of-ways. Topping is defined as the severe cutting back of limbs to stubs larger than three inches (3") in diameter within a tree crown so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees near or under utility wires or other obstructions where other pruning practices are impractical may be exempted from this Article at the determination of the City Forester. Any person in violation of this provision shall be subject to the penalties as established in this Article. (Gen. Ord. No. 5, 1998, As Amended, § 933-10, 4-17-98)

Sec. 6-201 Interference with City Forester.

No person shall hinder, prevent, delay, or interfere with the City Forester while the City Forester is engaged in carrying out the execution or enforcement of this Article; provided,

however, that nothing herein shall be construed as an attempt to prohibit the pursuit of any remedy in any court of competent jurisdiction. Any person in violation of this provision shall be subject to the penalties as established in this Article. (Gen. Ord. No. 5, 1998, As Amended, § 933.10, 4-17-98)

Sec. 6-202 Protection of Trees.

All trees planted upon public grounds and public right-of-ways near any excavation or construction or new development or street work shall be protected against unnecessary damage and destruction in accordance with the City Forestry Specifications and Standards. (Gen. Ord. No. 5, 1998, As Amended, § 933.10, 4-17-98)

Sec. 6-203 Avoiding Injury by Utility Pipes and Wires.

Any person or company maintaining any private, public, or municipal utility in the City shall, in the absence of provision in its franchise otherwise, maintain the utility in a manner to avoid injury to any tree on public ground or in public right-of-way. However, nothing in this Section shall be construed to apply to the removal of any tree by a utility when permit for such work has been granted by the City Forester or in the event of an emergency. (Gen. Ord. No. 9, 2002, 5-9-02)

Sec. 6-204 Illegally Planted Trees.

Any and all trees hereafter planted on public ground or in public right-of-way of the City, in violation of the terms of this Article, are expressly declared a public nuisance and subject to treatment and abatement as such. Any tree so raised contrary to law shall be abated as a common nuisance. All costs of such abatement, including cost of removal of any such trees, shall be paid by the violator to the City of Terre Haute, Indiana. Shrubs and plants are subject to the same regulations as trees under this Section. Such costs incurred by the City for the removal of such tree may be reduced to judgment and become a lien against the property of the violator. (Gen. Ord. No. 9, 2002, 5-9-02)

Sec. 6-205 Violation Notification; Stop Work Order.

a. **Stop Work Order.** The City Forester shall have authority to immediately issue a Stop Work Order in the event that the work under way is in violation of any of the provisions of this Article.

b. **Preliminary Notice of Violation.** Once a Stop Work Order is issued, the City Forester shall notify the violator with a written Preliminary Notice detailing the violation. The violator will be given five (5) working days to respond to the City Forester.

c. **Formal Notice of Violation.** If the violator does not respond to the Preliminary Notice of Violation within five (5) working days, the violator shall be given formal notice by the City Legal Department of the violation and subject to the penalties established in this Article.

d. In the event that a violation or nuisance is not abated by the day specified in any notice given by the City or any person on behalf of the City, the City Forester is authorized to cause the abatement of said violation or nuisance at the cost of the violator. Any decision made in this connection under this Article is appealable to the Circuit Court of Vigo County, Indiana. (Gen. Ord. No. 5, 1998, As Amended, § 933.10, 4-17-98)

Sec. 6-206 Emergencies.

a. In emergencies, when a tree or trees have been severely damaged by storms or other causes, the Mayor or the Urban Forester may waive the requirements for a permit. All removal of public trees under those conditions shall be reported to the Urban Forester.

b. The City of Terre Haute Street Department, public utilities, or the State Highway Department may act to trim or remove trees in emergency situations. (Gen. Ord. No. 5, 1998, As Amended, § 933.10, 4-17-98)

Sec. 6-207 Penalties.

a. Any person who violates any provision of this Article shall appear in City Court and be subject to a fine of not more than Two Thousand Five Hundred Dollars (\$2,500.00) and not less than Five Hundred Dollars (\$500.00) in addition to all other fines provided in this Article if the violator is a person who derives income from the planting, care, maintenance, and removal of trees or if the violator is an owner of commercial property.

b. Any person who violates any provision of this Article who does not derive income from the planting, care, maintenance, and removal of trees shall appear in City Court and be subject to a fine of not more than Three Hundred Dollars (\$300.00) and not less than One Hundred Dollars (\$100.00), and shall be required to replace any tree so removed with a tree or trees of equal value to the one removed as specified by the City Forester.

c. A separate offense shall be deemed committed on each day that a violation occurs or continues.

d. If, as a result of the violation of any provision of this Article, the injury, mutilation, or death of a tree is caused, the cost of repair or replacement or the appraised dollar value of such tree shall be borne and paid to the City by the party in violation. The value of trees shall be determined in accordance with the latest revision of A Guide to the Professional Evaluation of Landscape Trees, Specimen Shrubs, and Evergreens, as published by the International Society of Arboriculture. Such costs incurred by the City for the repair or replacement of such a tree may be recorded with the Vigo County Recorder's Office as a lien against the property. (Gen. Ord. No. 5, 1998, As Amended, § 933.10, 4-17-98)

Sec. 6-208 through Sec. 6-214 Reserved for Future Use

ARTICLE 14. EMERGENCY DISASTER PLANS.

Sec. 6-215 Local Emergencies.

Reserved for Future Use.

Sec. 6-216 through Sec. 6-224 Reserved for Future Use.

ARTICLE 15. MASSAGE THERAPY PRACTICES AND MASSAGE ESTABLISHMENTS.

Sec. 6-225 Definitions.

As used in this Article, the following terms shall have the meanings ascribed to them in this Section:

Massage. Manual soft tissue manipulation, and includes holding, causing movement, and/or applying pressure to the body for therapeutic purposes, and does not include the diagnosis or treatment of illness or disease.

Massage Establishment. Any building, room, place or establishment, other than:

- a. A massage therapy school certified by the state;
- b. A regularly licensed hospital or dispensary; or
- c. A facility wherein each person who administers a massage is exempt from the permit requirement under this Article, where massages nonmedical, and nonsurgical manipulative exercises are practiced upon the human body with or without the use of mechanical or bath devices, by someone not a physician, osteopath, chiropractor, podiatrist or physical therapist duly registered with and licensed by the state.

A Massage Establishment must be located within a C-1 zoning classification as a special use or a C-2 as a permitted use.

Masseuse, Masseur. A person who practices massage but does not meet any of the criteria for permit exemption in this Article.

Massage Therapist. A person who practices, administers or teaches all or any of the subjects or methods of treatment defined herein as massage therapy and meets the criteria for permit exemption in this Article.

Massage Therapy. A profession in which the practitioner applies manual techniques of massage, and may apply adjunctive therapies, with the intention of positively affecting the health and well-being of the recipient.

Massage Therapy Practice. A building, room, place or establishment that employs only Massage Therapists to perform Massage Therapy and is not included in the term Massage Establishment.

Person Employed. Any person who performs for any value received any function at an establishment required to be permitted under this Article, including but not limited to a Masseuse, Masseur or Massage Attendant, either:

- a. As an employee or independent contractor; or
- b. Otherwise, with the knowledge and consent of the owner or operator of the establishment.

Sexual and/or Genital Area. Means and includes genitals, pubic area, anus or perineum, and breast. (Gen. Ord. No. 6, 2001, 4-12-01)

Sec. 6-226 Permit Requirements.

a. A person may operate without obtaining a City permit a Massage Therapy Practice or practice as a Massage Therapist if he/she:

(1) Has been awarded the National Certification for Therapeutic Massage and Body Work, with certification displayed in a prominent location; or

(2) Has graduated from an educational institute of professional massage therapy instruction accredited by the state in which it is located, with diploma displayed in a prominent location; or

(3) Is a licensed LPN, RN, physician, chiropractor, osteopath, cosmetologist, esthetician, physical therapist, or assistant physical therapist with license displayed in a prominent location; or

(4) Is a student enrolled in an educational institute of professional massage therapy instruction accredited by the state of Indiana, performing massage therapy as part of his/her training requirements.

b. All other persons or entities and businesses owned, operating or engaging in the practice of performing Massage and Persons Employed, must obtain a City permit. (Gen. Ord. No. 6, 2001, 4-12-01)

Sec. 6-227 Operator's Application for Massage Establishment Permit.

a. The application for a permit to operate a Massage Establishment under this Article shall be made with the City Controller on forms provided by the City Controller, and shall contain the following information:

- (1) The name of the applicant, social security number, and all aliases and business names used by the applicant to conduct business;
- (2) The residence address of the applicant, and the applicant's residence address for the past three (3) years;
- (3) A picture of the applicant;
- (4) The business address of the applicant;
- (5) The number of massage tables, showers, stalls or other such individual units in the establishment;
- (6) Applicant information:
 - (A) In the case of an individual: age, social security number, date of birth and citizenship of the applicant;
 - (B) In the case of a corporation or partnership: date of incorporation or partnership, federal identification number and name, address and citizenship of each director, stockholder, owner, manager, officer or partner.
- (7) In the case of a corporation, the state in which it is incorporated and a certificate showing current status;
- (8) In the case of a limited liability company (LLC), the state in which it is registered and a certificate showing current status;
- (9) Information regarding persons employed by the applicant's establishment or who have a financial interest in the applicant's establishment: names, addresses, date of birth, social security numbers, and citizenship;
- (10) Whether any applicant, or in the case of a corporation or LLC, its managers, officers, directors, members or stockholders, have ever been previously engaged in operating a Massage Establishment;
- (11) Whether any applicant, or in the case of a corporation or LLC, its managers, officers, directors, members, or stockholders, have ever been convicted of any act of violence, moral turpitude, sex offense including but not limited to prostitution or public indecency involving the act of touching oneself or another in a sexual manner, or prior violation of this Article;
- (12) Authorization for the City, its agents and employees to seek information and to conduct an investigation into the truth of the statements set forth in the application and to permit inspection.

b. The Massage Establishment must provide all information requested and permit inspection to verify that the facility meets the requirements for facilities set forth in this Article.

c. If there is any change in the permitted business during the term of the permit such that the information provided in the application form is no longer complete or accurate, then the permittee shall notify the City Controller in writing within thirty (30) days after such change occurs. Failure to comply with this Subsection shall be a violation of the *Code*.

d. The City Controller shall process the application in a reasonable amount of time, but not greater than thirty (30) days. In cases where inadequate information has been provided or problems are found with the facilities, the City Controller may extend the time to process the application by making written notice to the applicant. A Massage Establishment may not be open for business if it does not have a current permit.

e. The Vigo County Board of Health may establish restrictions and/or standards for the Massage Establishment permitted under this Article with respect to public health and safety and failure to comply shall be a basis for denial of a permit or revocation of a permit issued. (Gen. Ord. No. 6, 2001, 4-12-01)

Sec. 6-228 Application for Massage Establishment Employee/Independent Contractor Permit.

a. Along with the operator's application for a permit, there shall be filed a verified application by each person employed in the establishment who is required by this Article to be permitted. The application shall contain the following information regarding the person:

- (1) Name and aliases;
- (2) Age and date of birth;
- (3) Social Security number;
- (4) Current residence address and former address for past three (3) years;
- (5) A copy of the applicant's driver's license;
- (6) A 3x5 photo of the applicant;
- (7) Citizenship;
- (8) Whether convicted of any public offense concerning an act of violence, moral turpitude, sex offense including but not limited to prostitution or public indecency involving the act of touching oneself or another in a sexual manner, or prior violation of this Article;
- (9) Nature of work performed;

(10) Name of Massage Establishment where employed;

(11) Authorization for the City, its agents and employees to seek information and to conduct an investigation into the truth of the statements set forth in the application.

b. The Vigo County Board of Health may establish restrictions on the activity of persons under this Article with respect to communicable diseases.

c. The City Controller shall process the application in a reasonable amount of time, but not greater than fifteen (15) days. In cases where inadequate information has been provided, the City Controller may extend the time to process the application by making written notice to the applicant. The applicant cannot be employed at a Massage Establishment if he/she does not have a permit. (Gen. Ord. No. 6, 2001, 4-12-01)

Sec. 6-229 Rejection of Application.

a. **Massage Establishment.** Before a permit under this Article is issued, the City Controller shall investigate the character of the applicant or the owners, officers, directors, members, partners, stockholders and managers of the business if the applicant is a business. No permit shall be issued if the City Controller determines that:

(1) Any of such persons previously have been connected with any Massage Establishment where the permit therefore has been revoked, or where any law applicable to such establishments has been violated; or

(2) The premises sought to be permitted fail to comply in any manner with any applicable laws or ordinances including zoning laws or ordinances.

b. **Masseuse, Masseur or Person Employed.** No person who has been convicted of any public offense concerning an act of violence, moral turpitude, sex offense including but not limited to prostitution, voyeuristic practices or public indecency involving the act of touching oneself or another in a sexual manner, and no business who employs such a person, shall be permitted under this Article. (Gen. Ord. No. 6, 2001, 4-12-01)

Sec. 6-230 Fees.

a. There are no annual fees for a person who operates, conducts or maintains a Massage Therapy Practice.

b. There are no annual fees for a person employed as a Massage Therapist at a Massage Therapy Practice.

c. The nonrefundable fee for a person who operates a Massage Establishment is Two Hundred Fifty Dollars (\$250.00) per year for each location. The permit is transferable to a new

location upon written notice to the City Controller and compliance with this Article for the new location.

d. The nonrefundable fee for a Masseuse, Masseur, or Person Employed in a Massage Establishment is Twenty Five Dollars (\$25.00) per year. The permit is transferable to a new location upon written notice to the City Controller. (Gen. Ord. No. 6, 2001, 4-12-01)

Sec. 6-231 Renewal.

- a. Permits are effective for one (1) year from the date of issue.
- b. Permits may be renewed by following the application process outlined in this Article.
- c. Applications for renewal may be submitted not more than sixty (60) days nor less than thirty (30) days prior to expiration of the permit. (Gen. Ord. No. 6, 2001, 4-12-01)

Sec. 6-232 Compliance Requirements for Facilities.

The Massage Establishment permitted must comply with each of the following minimum requirements:

a. Construction of rooms used for toilets, tubs, steam baths and showers shall be made waterproof with approved waterproofed materials, and shall be installed in accordance with the local building code. Plumbing fixtures shall be installed in accordance with the local plumbing code:

- (1) Steam rooms and shower components shall have waterproof floors, walls and ceilings approved by local building code;
- (2) Floors of wet and dry heat rooms shall be adequately pitched to one or more floor drains properly connected to the sewer (Exception: dry heat rooms with wooden floors need not be provided with pitched floors and flood drains.);
- (3) A source of hot water must be available within the immediate vicinity of dry and wet heat rooms to facilitate cleaning.

b. The premises shall have adequate equipment for disinfecting and sterilizing non-disposable instruments and materials used in administering massages, and must comply with all requirements of the Vigo County Board of Health. Such non-disposable instruments and materials shall be disinfected after use on each person.

c. Closed cabinets shall be provided and used for the storage of clean linens, towels, and other materials also used in connection with administering massages. All soiled linens, towels and other materials shall be kept in properly covered containers or cabinets, which containers or cabinets shall be kept separate from the clean storage areas.

d. Toilet facilities shall be provided in convenient locations and must comply in number and structure with the local building codes.

e. Lavatories or washbasins provided with both hot and cold running water shall be installed in either the toilet room or a vestibule. Lavatories or washbasins shall be provided with soap and a dispenser and with sanitary towels, and must otherwise comply with all requirements of the Vigo County Board of Health.

f. All electrical equipment shall be installed in accordance with the requirements of the local electrical code.

g. Proof of permit must be displayed in a prominent location in each Massage Establishment location. (Gen. Ord. No. 6, 2001, 4-12-01)

Sec. 6-233 Inspection Required.

a. It shall be the duty of the City Controller, through duly authorized representatives, to inspect Massage Establishment locations at the time of application for permit and from time to time to determine compliance with this Article.

b. Inspections are to be made at reasonable times, with due regard to the nature of the business to be inspected.

c. Upon showing the proper credentials, the representatives of the City Controller, including police officers, building inspectors and/or County Board of Health inspectors, shall be entitled to inspect portions of the Massage Establishment open to the public to determine compliance with this Article. (Gen. Ord. No. 6, 2001, 4-12-01)

Sec. 6-234 Operation.

a. No Massage Establishment shall provide Massage services to a person under eighteen (18) years of age unless the parent or guardian of such minor person has signed a consent to the services and remains in the room with the minor during the time services are being provided.

b. No Massage Establishment shall be kept open for any purpose between the hours of 10:00 p.m. and 6:00 a.m.

c. No Massage Establishment shall be operated or conducted in living quarters, and no one shall use such business premises for a place of habitation. No Massage Establishment shall have a separate entrance or opening to living quarters, and the entrances to such business premises must be separate from the entrances to any places of habitation.

d. No Person Employed by any permit holder under this Article to provide any of the services rendered by a Massage Establishment shall be under the age of eighteen (18) years.

e. Each Person Employed in a Massage Establishment permitted under this Article shall wear clean outer garments with a fully opaque covering of such person's sexual and/or genital areas.

f. The sexual and/or genital areas of patrons of establishments required to be permitted under this Article must be covered with towels, clothes or undergarments when in the presence of a person employed or other patrons.

g. No Person Employed in any Massage Establishment under this Article shall engage in or allow another to engage in any of the following acts: place his or her hand upon, touch with any part of his or her body, fondle in any manner. Massage a sexual and/or genital area of any other person, or practice voyeuristic activities.

h. No Person Employed in a Massage Establishment under this Article shall perform, offer or agree to perform, any act which shall require the touching of the patron's sexual and/or genital area.

i. Every Massage Establishment shall be open for inspection during all business hours and at other reasonable times by police officers, health, building and fire inspectors, and duly authorized representatives of the City upon the showing of proper credentials by such persons.

j. Any Massage Establishment is prohibited from installing or maintaining any lock or similar device on the inside of any door to an area where Massage is provided. There shall be available access to exits at all times during business hours.

k. Price rates for all services shall be prominently posted in the reception area in a location available to all prospective customers.

l. No Massage Establishment shall place, publish, or distribute or cause to be placed, published or distributed any advertisement, picture, or statement which is known or through the exercise of reasonable care, should be known to be false, deceptive or misleading in order to induce any person to purchase or utilize massage services. (Gen. Ord. No. 6, 2001, 4-12-01)

Sec. 6-235 Revocation or Suspension of Permit.

a. Any Massage Establishment shall be subject to being closed by an authorized representative of the City or the City Controller for failure to comply with this Article.

b. Upon notification by the City Controller of a denial or revocation of a permit, the applicant or permittee may, within ten (10) days, request a hearing by written notice to the City Controller. During those ten (10) days, a currently permitted Massage Establishment may remain open. If no hearing is requested, the Massage Establishment Permit will stand denied or revoked.

c. When a hearing is set by the City Controller the applicant or permittee shall receive, with not less than twenty (20) days written notice, a notice of the allegation of non-compliance, as well as the time and place where the hearing will be held. A current permitted Massage Establishment may remain open until notified of the hearing results or thirty (30) days whichever is less.

d. At a hearing conducted pursuant to this Section, the applicant or permittee shall have the right to be represented by counsel, to present witnesses, to testify and cross examine any other witnesses and to subpoena witnesses. Proceedings shall be conducted under oath.

e. The City Controller shall preside at the hearing and shall make the final termination.

f. If any decision adverse to the applicant or permittee is made by the City Controller after a hearing as provided above, the City Controller shall provide the applicant or permittee with a written reason for such decision, as well as a notice that the applicant or permittee has the right to pursue any legal remedies available under Indiana law. (Gen. Ord. No. 6, 2001, 4-12-01)

Sec. 6-236 Display of Permit.

All Massage Establishments permitted under this Article shall display in a visible location in the Massage Establishment for which the permit was issued. Persons employed must display their permit in a visible location within their work area. (Gen. Ord. No. 6, 2001, 4-12-01)

Sec. 6-237 Enforcement and Penalties.

A person who violates any provision of this Article shall be punishable as provided in this Section of the *Code*.

a. In addition to or in lieu of revocation or suspension of a permit as provided in Sec. 6-235, any Massage Establishment or permitted Person Employed including an Independent Contractor shall be subject to a fine for each day of violation or noncompliance with the provisions of this Article.

b. Provided, however, the fine imposed for such violations shall not be less than Two Hundred Dollars (\$200.00) and not more than Twenty Five Hundred Dollars (\$2,500.00) per violation and each day shall be a separate violation.

Sec. 6-238 and Sec. 6-239 Reserved for Future use

**ARTICLE 16. LIMITS ON THE SALE OF PRODUCTS CONTAINING
EPHEDRINE, PSEUDOEPHEDRINE AND PHENYLPROPANOLAMINE.**

Sec. 6-240 Definitions.

The following definitions shall apply in the interpretation and enforcement of this Article:

- a. **Customer.** Any person who purchases or acquires products from any retail store.
- b. **Ephedrine.** Any drug, substance or compound, whether legal or illegal, that contains ephedrine, pseudoephedrine, ephedrine hydrochloride, pseudoephedrine hydrochloride, pseudoephedrine sulfate, or phenylpropanolamine.
- c. **Package.** Any bottle, box, blister pack or other container in which products containing Ephedrine are sold.
- d. **Person.** Any person, firm, partnership, association, corporation, company or organization of any kind.
- e. **Retail Store.** Any single geographic location of any business, company, corporation, person, employee or associate, that sells Ephedrine to any customer. It does not include any wholesaler engaged in a wholesale transaction.
- f. **Sell.** To furnish, give away, exchange, transfer, deliver, surrender, distribute, or supply, whether or not for monetary gain or other consideration.
- g. **Wholesaler.** One whose business is the selling of goods in gross to retail stores for purposes of resale.

Sec. 6-241 Limitations on the Sale or Purchase of Ephedrine Products.

- a. Each Retail Store or Wholesaler shall require from its Customer identification showing he/she is of legal age (18), a picture form of identification and current address. All information obtained from the Customer shall be recorded in an appropriate manner and a copy of the report shall be forwarded to the Vigo County Prosecutor's Office at the end of each calendar month.
- b. It is unlawful for any Person, Retail Store or Wholesaler during a single transaction to sell to a Customer more than two (2) packages of products containing Ephedrine.
- c. It is unlawful for any Customer to purchase or acquire more than two (2) packages of products containing Ephedrine within a seven (7) day period.
- d. A retailer or wholesaler must store/sell drugs containing ephedrine or pseudoephedrine behind a counter or in a locked case making them inaccessible to the customer without the assistance of a store employee.
- e. This Article excludes any prescription written by a licensed physician and a pharmacist providing the drugs for a prescription.

Sec. 6-242. Penalty.

Whoever violates any provisions of this Article shall be fined not more than Two Thousand Five Hundred Dollars (\$2,500.00). Each day such violation is committed or permitted to continue shall constitute a separate offense..

ARTICLE 17. HAZARDOUS MATERIAL INCIDENT COST RECOVERY.

Sec. 6-245 Hazardous Material Cost Recovery.

This ordinance shall be known as and may be cited as the “Hazardous Material Incident Cost Recovery Ordinance.”

Sec. 6-246 Authority.

The City of Terre Haute has the authority to adopt this ordinance pursuant to and in accordance with the provisions of *I.C.* § 13-25-6 and *I.C.* § 36-8-12.2.

Sec. 6-247 Intent and Purpose.

This ordinance is intended to provide for recovery by the City of Terre Haute of costs incurred in the response and recovery efforts related to hazardous material incidents.

Sec. 6-248 Rules of Construction.

The provisions of this ordinance shall be liberally construed so as to effectively carry out its purpose in the interest of the public health, safety and welfare of the citizens and residents of the City of Terre Haute.

Sec. 6-249 Definitions.

a. **Cost(s).** Shall mean and include, but are not limited to:

(1) All costs incurred by the City of Terre Haute for response, containment and/or removal and disposal of hazardous materials or initial remedial action;

(2) Costs of any health assessment or health effects study and related treatment carried out for responding personnel as a necessity resulting from a hazardous material incident;

(3) Labor, including benefits, overtime, and administrative overhead, exclusive of normal departmental operations;

(4) The cost of operating, leasing, maintaining, repairing, extensive decontamination, and replacement where necessary of any equipment or apparatus;

(5) Contract labor and equipment;

(6) Materials, including but not limited to, absorbents, foam, dispersants, overpack drums, or containers;

(7) Supervision of clean up and abatement; and

(8) Labor and equipment obtained directly by the City of Terre Haute, their agencies or agents, and other agencies.

b. **Fire Chief.** The chief of the fire department or fire district that responded to a hazardous material incident.

c. **Hazardous Material.** Any substance or material in any form or quantity that poses an unreasonable risk to safety, health, or property.

d. **Hazardous Substance.** Any material which when discharged may be harmful to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public or private property.

e. **Hazardous Material Incident.** Actual or threatened release of hazardous substances or materials that pose an immediate threat to the health, safety or welfare of the population, including hazardous waste.

f. **Incident Commander.** The senior fire official at the site of the hazardous material incident; or the initial senior on-scene response official in the absence of the senior fire official; or a unified command structure which delegates control to officials from more than one agency.

g. **Release.** Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment including the abandonment or discarding of barrels, containers, and other receptacles containing any hazardous material or substance or waste or pollutant or contaminant.

h. **Response.** A phase of emergency management that occurs during and immediately following an incident. Provides emergency assistance to victims of the event and reduces the likelihood of secondary damage.

i. **Responsible Party.** The person(s) whose negligent or intentional or accidental act or omission caused a release; or, the person(s) who owned or had custody or control of, the hazardous substance or waste at the time of such release without regard to fault or proximate cause; or, the person(s) who owned or had custody or control of the container which held the hazardous substance at the time of or immediately prior to such release without regard to fault or proximate cause. "Responsible Party" may also include a corporation or partnership, facility, or other type of business entity.

Sec. 6-250 Hazardous Materials Incidents – Liability for Costs.

The Incident Commander or Fire Chief is hereby duly authorized to take all reasonable measures to respond to and stabilize the hazardous material incidents. Any Responsible Party who causes a Hazardous Material Incident shall be liable to the City of Terre Haute for the payment of all reasonable direct costs incurred in response to, stabilization of, and any necessary monitoring of such an incident including cost recovery for damages to government own properties.

The City of Terre Haute will seek all available remedies at law including the provisions of this ordinance, against any parties responsible for any Hazardous Material Incident, to include those actions and remedies available under the United States Bankruptcy Code relating to such matters.

Sec. 6-251 Service Charges Billed to Responsible Party

Sec. 6-252 Collection and Disbursement of Funds for Cost Recovery.

The Terre Haute Fire Department shall serve as the City's agent for collecting invoices for costs. Agencies of the City of Terre Haute or organizations responding to a hazardous material incident at the request of the City of Terre Haute will be eligible to submit bills.

Invoices that identify eligible costs under this Article shall be submitted to the Fire Chief or designee within ten (10) working days after incident is terminated and the costs were incurred or identified. Itemized invoices will be made readily available upon request and should include sufficient documentation for cost reimbursement (i.e., copies of time sheets for specific personnel, copies of bills for materials, equipment, and supplies procured or used, etc.). Accepting invoices from agencies outside the City of Terre Haute shall not incur liability to the City to pay costs from such agencies until payment has been received by the City of Terre Haute from the Responsible Party. If the Terre Haute Fire Department or other Terre Haute agency responds under a Mutual-Aid agreement outside the boundaries of the City, an invoice for services shall be submitted to the host agency or municipality within seven (7) working days from the termination of the incident. If the Terre Haute Fire Department or other Terre Haute agency responds under the activation of the "Indiana Regional Response Team" (Task Force 7), an invoice for services shall be submitted to the State of Indiana within seven (7) working days from the termination of the incident.

The Fire Chief or his designee shall submit one or a series of consolidated invoice(s) identifying agencies or agents and their specific costs for reimbursement to the City Controller who will forward these invoices to the responsible party. The Responsible Party shall issue payment to the City of Terre Haute within sixty (60) calendar days of receiving any invoice; if no payment or a partial payment is made after the due date, a penalty of ten percent (10%) will be added to the balance due. After a period of ninety (90) calendar days after the due date, legal action shall be taken to collect the balance due with penalty and the cost of all legal actions including attorney fees. All funds received under the authority of this ordinance shall be disbursed according to the claims submitted. Where the reimbursement is less than the requested amount, each agency shall receive a pro rata share of such reimbursement. The City of Terre Haute shall not be liable to any agency for any deficiency. The City of Terre Haute must deposit

one hundred percent (100%) of their amount received into a non-reverting Hazardous Material Response Fund established and maintained in accordance with *I.C. § 36-8-12.2-8* and *I.C. § 36-8-12.2-8.1*.

Sec 6-253 Allowable Expenditures from Fund

In accord with *I.C. § 36-6-12.2-8*, money collected under this article may be used only for the following:

- a. Purchase of supplies and equipment used in providing hazardous materials emergency assistance under this article.
- b. Training for members of the fire department in skills necessary for providing hazardous materials emergency assistance under this article.
- c. Payment to persons with which the fire department contracts to provide services related to the hazardous materials emergency assistance provided by the fire department under this article.

Sec. 6-254 Supervision.

In the event that any person(s) undertakes, upon order or direction of the Incident Commander or Fire Chief, to clean up or abate the effects of any hazardous material unlawfully released into the environment, the Incident Commander or Fire Chief may take any action necessary to supervise such cleanup or abatement. The person(s) described in Section 6-250 of this Article shall be liable to the City for all costs incurred as a result of such supervision, except when a federal, state or other governmental agency is supervising or abating any such release, unless the Incident Commander or Fire Chief is requested by any such agency to take action.

Sec. 6-255 Conflict with Other Laws.

Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance, the more restrictive requirements shall apply.

Further, this ordinance shall not restrict or replace cost recovery from funding sources available under state and federal regulations such as the Revolving Fund established under Section 311 (K) of the Federal Water Pollution Control Act {33 USC 1321 k}; the Hazardous Substance Response Trust Fund established under Comprehensive Environmental Response, Compensation, and Liability Act (42 USC 9611).