

TOWN OF BURNS HARBOR, INDIANA

TOWN CODE

ARTICLE I

TOWN COUNCIL

Sec. 2-1. **REGULAR MEETINGS.**

The Town Council of the Town of Burns Harbor, Indiana, shall meet in regular session on the 2nd and 4th Wednesday of each month hereafter at 7:30 p.m. prevailing time in the Town Hall of Burns Harbor, Indiana.

If any said regular meeting shall fall on a Legal Holiday, then the Council may reschedule said meeting at its pleasure.

Sec. 2-2. **SPECIAL MEETINGS.**

Special meetings of the Council may be called by the President or by any two (2) Council members upon written request, duly signed by either the President or any two (2) Council members, and presented to the Clerk-Treasurer, stating the purpose of the meeting. The Clerk-Treasurer shall immediately prepare proper written notices of the same, stating the purpose for which said meeting is called, shall cause said notices to be served upon the members of the Council at least 48 hours prior to the time when said meeting is to be held. Said notices may be served, by delivering a copy thereof to the member of the Council or by leaving a copy thereof at the residence of the Council members.

At every special meeting, the purpose for the same shall be read and then filed by the Clerk-Treasurer, and duly incorporated in the minutes of such meeting. No business other than that stated in the notice shall be considered at such meeting.

A written notice of a special meeting shall not be required if the time and place of a special meeting has been fixed in a regular meeting when a quorum is present, or if not less than four (4) of the Council members are present, together and willing to conduct business at the special meeting.

Sec. 2-3. **QUORUM - VOTING.**

A majority of all the elected Council members shall constitute a quorum. All business transacted at a regular or properly called special meeting must be passed by a majority vote of elected Council members which is three (3). No voting by proxy shall be permitted. (*Ordinance 114, 3/23/1988*)

Sec. 2-4. **ORDER OF BUSINESS.**

The following shall be the order of business at all regular meetings:

- A. At the hour appointed for the meeting, the President shall call the meeting to order. If the President be not present at such meeting, the Vice-President shall take the chair and call the meeting to order and preside as Chairman of the meeting. If neither the President or Vice-President shall be present at such meeting, the Council shall proceed to elect from among its members, a President Pro-Tem, to preside as Chairman of such meeting.
- B. The President of the Town Council shall lead the Council and the public in the recital of the Pledge of Allegiance.
- C. The Clerk-Treasurer, or in her absence, a member of the Council, appointed by the President, shall proceed to call the roll of the Council members and mark the absentees, if any, and announce whether a quorum is present, and shall further record the minutes of the meeting.
- D. The Clerk-Treasurer shall prepare the minutes of each meeting of the Town Council and prior to the following regularly scheduled meeting shall place a copy of said minutes in each Council members' mailbox in the Town Hall and shall post a copy of said minutes on the bulletin board within the Town Hall. Said minutes shall be approved as written or as amended without the necessity of reading the minutes aloud.
- E. The Treasurer's report shall be prepared, distributed, posted and approved by the Town Council of the Town of Burns Harbor in the same manner as set forth in subsection (D) pertaining to the minutes of Council meetings.
- F. Presentation, approval and signing of bills and claims by the Town Council shall be accomplished without the necessity of reading each bill or claim aloud. Said bills or claims shall be on file in the office of the

Clerk-Treasurer for public inspection prior to the regularly scheduled meeting when they are to be presented and an itemized list of said bills or claims shall be posted by the Clerk-Treasurer on the bulletin board in the Town Hall prior to each meeting. Said bills or claims shall be approved by the Town Council by roll call vote.

- G. Correspondence.
- H. Report of Town Officials.
- I. Reports of Standing Committees.
- J. Report of Special Committees.
- K. Presentation of Petitions, Communications, Ordinances, Resolutions and Remonstrances.
- L. Ordinances on First and Second Reading.
- M. Ordinances on Third Reading.
- N. Unfinished or deferred business.
- O. New business.
- P. Good of the order of the community.
- Q. Announcements.
- R. Adjournment.

Sec. 2-5. **CONDUCT OF MEETINGS.**

- A. All questions relating to the priority of business shall be decided by the Presiding Officer, without debate, subject to appeal by the Council.
- B. The Presiding Officer shall preserve order and decorum, and shall decide all questions of order, subject to an appeal by any member of the Council.
- C. Any person not a member of the Town Council wishing to obtain the floor, at the regular order of business, shall stand, address the Chair and state his or her name

so that they may be properly recognized. When two (2) or more stand at the same time, the one (1) recognized by the Presiding Officer will be given the floor.

- D. Every Council member, previous to speaking or making a motion, shall address himself to the Presiding Officer and say, "Mr. President", and such Council member shall not proceed with his remarks until he has been recognized by the Presiding Officer.
- E. When two or more Council members are attempting to gain recognition from the Chair at the same time, the Chair shall recognize the Council member who addressed him first.
- F. In the event of any disturbance of disorderly conduct, during any session of the Town Council, the Presiding Officer shall restore order and shall have the power to require the room to be cleared of disorderly spectators, if necessary.
- G. Every Council member who is present, when a question is stated by the Chair, may vote thereon, but no Councilmember shall vote on any matter in which he shall be personally or financially interested.
- H. No Council member shall be allowed to leave the meeting room while the Town Council is in session, unless excused by Presiding Officer.
- I. No motion shall be put or debated until after it has had a second. After a motion has received a second, it shall be stated by the Presiding Officer before it shall be debated. After a motion has been stated by the Presiding Officer, the mover of the same shall be entitled to first have the floor and to talk upon the same and, if he so desires to close the discussion thereof after unlimited debate by the Town Council.
- J. Except for approval of the minutes, when a question has been put for the purpose of taking a vote on any matter before the Town Council, then it shall be the duty of the Clerk to call the name of each Council member in the order of the wards of the Town, beginning with ward one (1) and ending with ward five (5), and each Councilmember as his name is called may thereupon vote the question by saying "Aye" or "No", according to his desire in the matter, unless such Council member be precluded from voting on such question by the rules of the Town Council.
- K. When any question is under discussion or debate, the only motion in order shall be: A - to adjourn to a time certain; B- to adjourn; C - to lay on the tables; D - the previous question; E - to refer; F - to amend; G - to substitute; H - to postpone indefinitely or to postpone to a time certain; and B - and C - and D - shall be decided without debate.

- L. When a previous question has been moved, it shall be the duty of the Presiding Officer to put in this form: "are you ready for the question", if the previous question carries, all further discussion must stop and the question must be put without delay; first the amendments in their proper order and then the main question in its amended form.
- M. When a motion is postponed indefinitely, it shall NOT be again taken up at the same meeting.
- N. The Town Marshal or Deputy Marshal, or in their absence, an individual appointed by the Town Council, shall preserve order and perform all duties usually appertaining to the office of Sergeant-at-Arms.

Sec. 2-6. **COMMITTEES.**

- A. The following shall be the Standing Committees of the Town Council:
 - 1. Budget
 - 2. Road Committee
 - 3. Public improvement
 - 4. Building and grounds
 - 5. Council rules
 - 6. Ordinance
- B. The standing committees shall consist of not less than two (2) Council members, appointed upon adoption of these By-laws, and at the first meeting in January thereafter, by the President, subject to approval of the Council.
- C. All standing committees and all vacancies thereon shall be filled by the President subject to approval of the Council.
- D. No ordinance, ***absent agreement of a majority of the Town Council***, shall be presented for consideration or discussion to the Town Council of the Town of Burns Harbor, Indiana, unless each Council member shall first have had a draft copy of the ordinance one week prior to the time it is presented for discussion or consideration. (*Ordinance 166, 12/13/2000*)

In the event any ordinance is not reported out by the committee to which it is assigned, any one Council member at said Council meeting may move that said ordinance be brought out of committee at the next regular meeting, and if said motion is carried at such meeting, said ordinance

shall be reported out either favorably or unfavorably at the next regular meeting.

- E. All proposed amendments to these rules *may* be referred to the committee on rules without debate. Said committee shall have power to report at any time, any change in the rules, or in the order of business, and any such report shall be by the Council disposed of without delay. Any change in these rules or in the order of business shall be determined by a majority vote of the elected Council members of the Town Council and not otherwise. (*Ordinance 166, 12/13/2000*)
- F. Unless otherwise provided in these rules, or in case of any emergency, all committee meetings shall be called at any time.
- G. Standing and special committees, to which reference of any matter is made, shall in all cases report at least once each month unless further time is granted by a majority vote of all members of the Town Council, with their opinions and recommendations thereon. Minority reports of all committees may be received at the same time with the reports of the majority.
- H. All written reports of committees shall be addressed "To the President and Town Council of the Town of Burns Harbor, Indiana". They shall describe the matter referred to and the conclusion shall be framed and summed up in the form of an ordinance, order, resolution, recommendation or such other distinct proposition and such reports may be presented to the Council by the Chairman of the committee upon call of reports of the committees.
- I. The rules of Parliamentary Practice comprised in "Robert's Rules of Order" revised shall govern the Town Council in all cases to which they are applicable, and in which they are not inconsistent with the standing rules of this Town Council.
- J. These rules may be temporarily suspended by the consent of two-third (2/3) of the Town Council present and not otherwise, a fractional number shall be considered as the next highest number.
- K. A majority of the committee *may* approve *an* ordinance *referred to it* before it is submitted to the Town Council. The committee Chairman or a member, in his or her absence, may deliver a copy of the ordinance to the Clerk. ***Ordinances may be passed by the Town Council after discussion is concluded, a motion for passage is made and seconded, and a vote of not less than three Council members in support of the ordinance is recorded.*** No ordinance may be passed at the same meeting it is introduced, unless

under suspension of rules and then only in cases where there are present and voting at least two-thirds (2/3) of all the elected Council members of the Town Council; a fractional number shall be considered as the next highest number. It shall require a majority vote of all the elected Council members to pass an ordinance. (*Ordinance 166, 12/13/2000*)

Sec. 2-7. OFFICERS AND DUTIES.

The following shall be the officers of the Town Council and their duties:

A. President:

The President shall:

1. Preserve order and decorum;
2. Decide all questions of order, subject to appeal by the Town Council;
3. Announce the result of all votes by the Town Council upon all motions, resolutions, ordinances, and other matters;
4. Appoint all members of standing and special committees, subject to approval by the Town Council.

B. Vice-President:

The Vice-President shall serve as Presiding Officer in the absence of the President, and at such times he shall have the same powers and duties as the President.

C. Town Attorney:

The duties of the Town Attorney shall be as follows:

1. To attend Town Council meetings, regular and special, and to confer and advise Town Council members;
2. To prepare ordinances, resolutions, motions, legal notices, and all other notices that may be necessary to enable the Town Council to transact the business of the Town; and
3. To prosecute all violations of Town ordinances.

D. Clerk-Treasurer:

The duties of the Clerk-Treasurer shall be those as provided by the laws of the State of Indiana pertaining to Clerk-Treasurer.

In addition, the Clerk-Treasurer shall perform the following:

1. The minutes of the Council shall be kept in due form by the Clerk-Treasurer and his or her signature together with that of the Presiding Officer of the Council shall attest the same.
2. It shall be the duty of the Clerk-Treasurer to cause the minutes of all regular and special meetings of the Council to be written up at full length upon the minute book, which book shall be kept for that purpose, and to furnish to the President and to each member of the Council a legible copy thereof within one (1) week after such meeting of such Council has been held.

E. Election of Officers:

All officers of the Town Council, except the Clerk-Treasurer, shall be chosen as follows:

1. Following the November general election in which the Town Council members are elected, the new Town Council shall meet on January 1st at 12:00 noon and elect a Council President and Vice-President to serve until the last regularly scheduled Town Council meeting in December of that calendar year. The Council shall also appoint a Town Attorney to serve at the pleasure of the Council.
2. On the last regularly scheduled meeting of the Town Council in December, at the conclusion of the 1st, 2nd, and 3rd years of the term of the Town Council, the Council shall elect a President and Vice-President to serve until the next scheduled election of officers. The Town Council shall also appoint a Town Attorney to serve at the pleasure of the Council.

ARTICLE II

ECONOMIC DEVELOPMENT COMMISSION

Sec. 2-8. ESTABLISHMENT.

That pursuant to I.C. 36-7-12 the Town Council of Burns Harbor hereby establishes a Department of Economic Development, to be controlled by a commission known as the Burns Harbor Economic Development Commission.

Sec. 2-9. APPOINTMENTS.

Members of the Burns Harbor Economic Development Commission shall be nominated and appointed and shall serve for the terms all as set forth in I.C. 36-7-12-6 as the same may be amended from time to time. One of the members shall be selected by the Town Council President (Town executive) for a period of three (3) years, one member shall be nominated by the Porter County Council and shall serve for a period of one (1) year, and one member shall be nominated by the Town Council of Burns Harbor for a term of two (2) years. The Economic Development Commissioners shall take office upon their appointment and their terms run from February 1 after their original appointments for the aforementioned terms.

Sec. 2-10. CLERK-TREASURER TO NOTIFY.

The Clerk-Treasurer of the Town of Burns Harbor is directed to notify promptly the Town Council of the Town of Burns Harbor, the President thereof and the Porter County Council of the adoption of this ordinance and of their duty to nominate, select and/or appoint members of the Burns Harbor Economic Development Commission.

Sec. 2-11. ORGANIZATION.

The Burns Harbor Economic Development Commission shall meet to organize within thirty (30) days after appointment of its members upon call of the President of the Town Council of Burns Harbor and shall notify the Director of the Indiana Department of Commerce in writing of the formation of such commission within thirty (30) days of the organization meeting. (*Ordinance 125, 7/26/89*)

ARTICLE III

POLICE RESERVE

Sec. 2-12. **POLICE RESERVE CREATED.**

That the Town Marshal shall have the authority to create and administer a Police Reserve in the Town of Burns Harbor, Porter County, Indiana, the aforesaid Police Reserve shall be created and administered pursuant to I.C. 36-8-3-20 and the further orders, from time to time, of the Town Council of the Town of Burns Harbor, Porter County, Indiana.

ARTICLE IV

PROMOTIONAL FUND.

Sec. 2-13. **PROMOTIONAL FUND.**

That the Town Council of the Town of Burns Harbor is authorized to budget and appropriate funds from the General Fund of said Town to pay the expenses of or to reimburse Town Officials as the case may be, for expenses incurred in promoting the interests of the Town. Such expenses may include, but are not necessarily limited to, the following: rental of meeting places; meals; decoration; memorabilia; awards; expenses incurred in interviewing job applicants; expenses incurred in promoting industrial, commercial, and residential development; expenses incurred in developing relations with other units of government; and any other expenses of a civic or governmental nature deemed by the Town Council of the Town of Burns Harbor, Porter County, Indiana, to be in the interest of the Town.

(Ordinance 119, 1/ 25/1989)

ARTICLE V

CUMULATIVE CAPITAL DEVELOPMENT FUND

Sec. 2-14. **FUND ESTABLISHED.**

That there is hereby re-established a Burns Harbor Cumulative Capital Development Fund pursuant to I.C. 36-9-15.5. (*Ordinance 138, 7/22/1992*)

Sec. 2-15. **TAX IMPOSED.**

That an ad valorem property tax levy will be imposed and the revenues from the levy will be retained in the Burns Harbor Cumulative Capital Development Fund.

Sec. 2-16. **RATE OF LEVY.**

That the maximum rate of levy under Sec. 2-15 will not exceed:

\$.04 per \$100.00 of assessed valuation for 1993
\$.04 per \$100.00 of assessed valuation for 1994
\$.04 per \$100.00 of assessed valuation for 1995

Sec. 2-17. **DURATION OF FUND.**

Public Law 17 - SEA 384 - Effective May 10 and July 1, 1995 amends various sections of law - Adds IC 6-1.1-41. Sets procedures for establishing and imposing a tax levy for cumulative funds. Allows the continuance of cumulative fund levy without further action of the State Board of Tax Commissioners. Permits cities and towns to transfer any remaining money in a cumulative fund, once the purpose of the fund is established or the tax levy is rescinded, to the general fund.

Sec. 2-18. **USES OF FUND.**

That the funds accumulated in the Burns Harbor Cumulative Capital Development Fund will be used for the following:

- A. For firefighting building and equipment or police equipment as described in I.C. 36-8-14.
- B. For building as described in I.C. 36-9-16-2.
- C. For capital improvements as described in I.C. 36-9-16-3.
- D. For improvement of streets as described in I.C. 36-9-16.5.
- E. For general improvements as described in I.C. 36-9-17.
- F. For building with regard to sewers as described in I.C. 36-9-26.
- G. For drainage projects as outlined in I.C. 36-9-27-100.
- H. For building with regard to parks as outlined in I.C. 36-0-3-21.
- I. For sinking and building projects with regard to parks as described in I.C. 36-10-4-36.
- J. For any other purpose allowable pursuant to I.C. 36-9-15.5 and any amendment thereto.

Sec. 2-19. **EMERGENCY SITUATIONS.**

Notwithstanding Sec. 2-18, funds accumulated in the Burns Harbor Cumulative Capital Development Fund may be spent for purposes other than the purposes stated in Sec. 2-18, if the purpose is to protect the public health, welfare or safety in an emergency situation which demands immediate action. Money may be spent under the authority of this section only after the Town Council President issues a declaration that the public health, welfare or safety is in immediate danger that requires the expenditure of money in the fund. (*Ordinance 138, 7/22/1992*)

ARTICLE VI

DRUG & ALCOHOL TESTING

(Ordinance 154, 4/10/1996)

Sec. 2-20. **A. ALCOHOL AND DRUG TESTING.**

The Omnibus Transportation Employee Testing Act of 1991 (hereinafter referred to as "The Act") is hereby adopted inasmuch as it applies to the Town of Burns Harbor, Indiana (hereinafter referred to as "The Employer"), its officers and employees. Two copies of The Act are on file for inspection at the office of the Clerk-Treasurer of the Town of Burns Harbor. The provisions of The Act applicable to the Town of Burns Harbor shall be effective beginning January 1, 1996.

Sec. 2-21 **B. EMPLOYEES AFFECTED.**

1. Under 49 CFR § 382.103 of The Act, the rules set forth here for alcohol misuse and controlled substance requirements apply to all drivers who are required by the nature of his or her job description to have a CDL under Federal law while performing safety-sensitive functions.
 - a. For purposes of this Ordinance, each employee's respective Department Head and/or Town's designated representative will serve as the person designated to answer the employee questions about this policy.
 - b. Employees are required to be in compliance with this Ordinance for the entire work day, or any time he/she reports for emergency or after-hours duty or Performing (a safety-sensitive function) as defined in 49 CFR § 382.107.
2. A safety-sensitive function means any of those on-duty functions set forth in 49 CFR § 395.2 and any of those listed below.
 - a. All time at a carrier or shipper plant, terminal, facility, or other property waiting to be dispatched, unless relieved of duty by The Employer.
 - b. All time inspecting equipment as required by the federal motor carrier safety regulations, or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at anytime.
 - c. Any time spent at the driving controls of a commercial motor vehicle in operation.

- d. Any time, other than sleeper berth time, spent on or in a commercial vehicle.
- e. All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in a readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded.
- f. All time spent performing the driver requirements associated with an accident.
- g. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Sec. 2-22 **C. Prohibitions.**

- 1. Alcohol use is prohibited within four (4) hours of performing a safety-sensitive function and while performing safety-sensitive functions - - 49 CFR §382.205 and 382.207.
- 2. No driver required to have a CDL shall report for duty or remain on duty requiring the performance safety-sensitive functions while using alcohol.
- 3. No driver required to have a CDL shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having a blood alcohol concentration (BAC) of 0.02 or greater.
- 4. A driver with a BAC of 0.02 or greater but less than 0.04 may not perform safety sensitive functions until twenty-four (24) hours from the time the test elapsed - - 49 CFR §382.505.
- 5. A driver with a BAC of 0.04 or greater has failed the alcohol test and is prohibited from performing safety-sensitive functions until the requirements of 49 CFR §382.501 and 382.503 are satisfied.
- 6. No driver shall refuse to submit to an alcohol test required under 49 CFR Part 382.
- 7. No driver required to take a post-accident alcohol test as required by Federal or State Law or regulation shall use alcohol for eight (8) hours following the accident, or until he or she undergoes the post-accident test, whichever occurs first.
- 8. No driver required to have a CDL shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses or tests positive for any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the driver in writing that the substance does not adversely affect the driver's ability to safely operate a vehicle. The Employer may require a driver to inform the Department Head of any therapeutic drug use.

D. Testing.

The Employer shall provide for, and the employees performing safety-sensitive functions requiring CDL shall submit to, the following required tests in the manner prescribed by law. Testing will be performed by an independent third party agency in accordance with all Department of Transportation rules, procedures and standards as stated in the Federal Register. In all cases, a designated independent agency, acting on behalf of the Employer, will document all required paperwork for The Employer as detailed in The Act.

1. Post-Accident Testing.

- a. Drug and alcohol tests are required after any fatality - - regardless of whether the driver receives a citation.
- b. Drug and alcohol tests are required after any other reportable accident, if the driver receives a citation.
- c. Other reportable accidents are:
 - (1) Accidents where one or more persons involved in the accident are treated away from the scene, immediately thereafter, for the injuries sustained in the accident; or
 - (2) Accidents where one or more of the vehicles is towed from the scene due to disabling damage.
- d. Alcohol testing must be conducted within two (2) hours of the accident.
 - (1) If not administered within two (2) hours, The Employer must document the reason for the delay.
 - (2) If not administered within eight (8) hours, The Employer must cease attempts to test and document why the test was not administered.
- e. Controlled substance testing must be conducted within thirty-two (32) hours. If the test is not administered within thirty-two (32) hours, The Employer must cease attempts to test and document why the test was not performed.
- f. After an accident requiring the driver to submit to an alcohol and drug test, the driver may not consume alcohol for eight (8) hours or until the driver is tested for alcohol, whichever occurs first.
- g. Exception - An employer may not have to require that the driver submit to a post-accident alcohol or drug test if:
 - (1) An alcohol or drug test was conducted at the request of Federal, State, or local authorities having independent authority to require the test; and

- (2) The alcohol test was either a blood or breath test; and
 - (3) The drug test was a urine test; and
 - (4) The test complies with applicable Federal, State, or local requirements; and
 - (5) The Employer obtains the results.
- h. If the Federal, State, or local authorities only conducted one of the two required tests (either the alcohol or the drug test), The Employer still must ensure the other test is conducted.
2. Random Testing.
- a. Alcohol testing - must test at an annual rate of twenty-five percent (25%) of the average number of driver positions.
 - b. Controlled substance testing - must test at an annual rate of fifty percent (50%) of the average number of driver positions.
 - c. The Employer must ensure that random selection is conducted by a scientifically valid method. Each driver must have an equal chance of being selected.
 - d. A driver selected to be tested returns to the pool for the next selection. Therefore, in the course of the year, some drivers may be selected more than once, while other drivers may not be selected at all.
 - e. Random selections must be reasonably spread through the year. Therefore, the required number of tests will be conducted on a quarterly basis.
 - f. Once notified of being selected, the driver must proceed immediately to the testing site to be tested.
 - g. A driver may be tested for alcohol only while performing safety-sensitive functions, or just before or just after performing safety-sensitive functions. If the driver selected for an alcohol test is not performing safety-sensitive functions, The Employer keeps the driver's selection confidential until the driver is in a position to be tested.
3. Reasonable Suspicion Testing.
- a. A driver must be removed from performing safety-sensitive functions if there is reasonable suspicion to believe the driver is under the influence of drugs or alcohol.
 - b. The behavior must be observed by a Supervisor or Department Head trained in accordance with 49 CFR §382.603.
 - (1) Each person designated to determine reasonable suspicion must receive:
 - (a) A minimum of sixty (60) minutes of training on alcohol abuse; and

- (b) A minimum of sixty (60) minutes of training on drug abuse covering the physical, behavioral, speech, and performance indicators of probable alcohol and drug abuse. If the Town official received training meeting these requirements prior to the effective date of the rule, the official does not have to be retrained.
- c. Alcohol testing:
 - (1) A driver exhibiting the symptoms of alcohol use may not preform safety-related functions until an alcohol test is administered with a result below 0.02, or twenty-four (24) hours have elapsed.
 - (2) The observation must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver.
 - (3) The observation must be made during, just before, or just after performing safety-sensitive functions.
 - (4) The test must be conducted as soon as possible.
 - (a) If not conducted within two (2) hours, The Employer must document the reason for the delay.
 - (b) If not conducted within eight (8) hours, The Employer must cease attempts to test the driver and document why the test was not conducted.
- d. Drug Testing:
 - (1) The Employer shall require that a driver exhibiting the symptoms of drug abuse submit to a drug test.
 - (2) The reasonable suspicion must be based on a specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver. The observations may also include the chronic and withdrawal effects of controlled substance abuse.
 - (3) It is not necessary that the behavior giving rise to the reasonable suspicion occur either just before, during, or after performing safety-sensitive functions.
 - (4) Observations giving rise to reasonable suspicion of drug use must be documented in writing by the observing official within twenty-four (24) hours of the observation, or before the return of the results, whichever is earlier.

4. Return-to-Duty Testing.
 - a. Before a driver who either failed an alcohol or drug test or refused to be tested may return to performing safety-sensitive functions, the driver must pass a return-to-duty alcohol test if the conduct involved alcohol , or drug test if the conduct involved drugs.
 - b. If a return-to-duty alcohol test is required, the results must be less than 0.02 BAC.
5. Follow-up Testing.
 - a. If the substance abuse professional determines the driver requires assistance in resolving drug and/or alcohol problems, then the driver must submit to unannounced follow-up alcohol and/or drug testing after returning to performing safety-sensitive functions - - 49 CFR §382.311(a).
 - b. The frequency of follow-up testing is determined by the substance abuse professional, but in no event shall be less than six (6) times in a twelve (12) month period. Follow-up testing may not proceed for longer than sixty (60) months - - 49 CFR §382.605(c)(2)(ii).
 - c. Follow-up alcohol testing must be conducted either just before, during, or just after performing safety-sensitive functions - - 49 CFR §382.311(b).
6. The results of the testing shall be completed and retained by The Employer, or its designated agent performing the tests, as required by law.
 - a. Five (5) Year Retention Requirement - - 49 CFR §382.401(b)(1).
 - (1) Alcohol test results greater than 0.02 BAC.
 - (2) Verified positive controlled substance test results.
 - (3) Documentation of refusals to test.
 - (4) Calibration documents.
 - (5) Driver evaluations and referrals.
 - b. Two (2) Year Retention Requirement - - 49 CFR §382.401(b)(2).
 - (1) Records relating to alcohol and controlled substances testing collection processes.
 - (2) Records relating to alcohol and controlled substances training.
 - c. One (1) Year Retention Requirement - - 49 CFR §382.401(C)
 - (1) Records of negative and cancelled drug tests.
 - (2) Records of alcohol test with a result below 0.02 BAC.

7. Tests results are confidential except as release is provided for to the employee, medical review personnel or subsequent employers.
8. The Employer shall designate Supervisors and Department Heads to receive training on alcohol misuse and controlled substance use to comply with State and Federal regulations.
9. The Employer shall make literature concerning the policy established by this Ordinance available to all employees.
10. Required Background Checks and Release of Information.
 - a. The Employer shall make a good faith effort to obtain from an applicant's previous employers, pursuant to the applicant's consent, information regarding the applicant's previous alcohol and drug tests, and refusals to be tested, within the preceding two (2) years.
 - b. The information should be obtained prior to employment, but in any event not later than fourteen (14) days after the driver begins safety-sensitive functions. After fourteen (14) days, The Employer may not permit a driver to continue to perform safety-sensitive functions until the information is obtained.
 - c. The Employer must provide a copy of the driver's signed written release to the previous employer(s) as provided for in 49 CFR §382.413.
 - d. The Employer may not use a driver to perform safety-sensitive functions if the required background check reveals the driver tested positive for alcohol or drugs and was not evaluated by a substance abuse professional.
 - e. The Employer, when presented with the driver's signed written consent authorizing release of alcohol and drug tests, must release the information to a requesting employer - - 49 CFR §382.405(f).
11. Testing Procedures.

The Employer will use an independent agency to perform all aspects of the testing and record-keeping procedures required by The Act.
12. Refusal to Submit to an Alcohol or Drug Test - - 49 CFR §382.107.
 - a. Refusal to submit to an alcohol or controlled substance test means that driver:
 - (1) Fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing in accordance with the provisions of this part;
 - (2) Fails to provide adequate urine for controlled substance testing without a valid medical explanation after he or she has received notice of the

requirement for urine testing in accordance with the provisions of this part; or

- (3) Engages in conduct that clearly obstructs the testing process.

13. Consequences for Drivers Engaging in Substance Use - Related Conduct.

- a. No driver shall perform safety-sensitive functions including driving commercial motor vehicle, if the driver has engaged in conduct prohibited by 49 CFR §382.201 through 382.215. Additionally, no driver who has engaged in conduct prohibited by 49 CFR §382.201 through 382.215 shall be allowed to perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of 49 CFR §382.605.
- b. No driver tested pursuant to 49 CFR §382.301 through 382.311 who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions, including driving a commercial motor vehicle, until the start of the driver's next regularly scheduled duty period, but not less than twenty-four (24) hours following the administration of the test.
- c. Regardless of the provisions of the preceding, any driver who is found to have been engaged in conduct prohibited by 49 CFR §382.201 through 382.215 may be suspended at the sole discretion of the appropriate Town of Burns Harbor Department Head which supervisor shall be reported to the Burns Harbor Town Council. Thereafter, the suspended Employee may be disciplined and/or terminated by the Burns Harbor Town Council.
- d. Refusal to take the required test will be treated the same as a violation of 49 CFR §382.201 through 382.215.

Sec. 2- 24 **E. Responsibility for Costs.**

The costs of referral, evaluation, and/or treatment required of a driver pursuant to 49 CFR §382.605 shall be the sole responsibility of the driver.

ARTICLE VII

PARK NON-REVERTING FUND

(Ordinance 155, 7/24/1996)

- Sec. 2-25 **1.** A special non-reverting operating fund for park purposes from which expenditures may be made as directed by ordinance, either by appropriation by the Park Board or by the Burns Harbor Town Council, is hereby created.
- Sec. 2-26 **2.** A special non-reverting capital fund for the purpose of acquiring land or making specific capital improvements from which the expenditures may be made by appropriation by the Town Council is hereby created.
- Sec. 2-27 **3.** The Town Council of Burns Harbor shall, by resolution, designate the fund or funds into which the Clerk-Treasurer of the Town shall deposit fees received from the Park Department in connection with the use of park facilities.
- Sec. 2-28 **4.** Fees collected by the Park Department in connection with services rendered by the Park Department shall be delivered to the Clerk-Treasurer of the Town of Burns Harbor at least weekly for deposit into the non-reverting operating fund or the non-reverting capital fund as directed by the Town Council.

ARTICLE VIII

AMENDING ELECTION DISTRICTS

(Ordinance 158, 6/11/1997)

Sec. 2-29 **SECTION 1:**

The five (5) election districts which currently exist for the election of members of the Burns Harbor Town Council and Clerk-Treasurer are abolished for purposes of electing Town Council members and the Clerk-Treasurer in the next general election and future general elections.

Sec. 2-30 **SECTION 2:**

The five (5) members of the Burns Harbor Town Council shall henceforth be elected from a combination of three (3) election districts (Wards) and at-large.

Sec. 2-31 **SECTION 3:**

One Town Council member shall be elected from each of the three (3) election districts. Any member elected from a specific district shall be a resident thereof.

Sec. 2-32 **SECTION 4:**

Two (2) Town Council members shall be elected at-large from the Town as a whole. At-large Council members must be residents of the Town of Burns Harbor but may reside in any election district.

Sec. 2-33 **SECTION 5:**

The geographical boundaries of the three (3) election districts are as follows:

a. **DISTRICT ONE:**

- North boundary: The shores of Lake Michigan;
- East boundary: Beginning at the intersection of State Road 149 and I-94 and extending North on State Road 149 to the shore of Lake Michigan;
- South boundary: Beginning at the intersection of the West boundary of the Town of Burns Harbor and the North side of West Boo Road and thence East along the North side of West Boo Road extended East to the intersection of State Road 149;
- West boundary: Beginning at the intersection of the West boundary of the Town of Burns Harbor and the North side of West Boo Road and extending North to the shores of Lake Michigan.

b. **DISTRICT TWO:**

- North boundary: The shores of Lake Michigan;
- East boundary: Beginning at the intersection of the current East boundary of the Town of Burns Harbor and I-94 extending on said East boundary North to the shores of Lake Michigan;
- South boundary: Beginning at the intersection of the East boundary of the Town of Burns Harbor and I-94 and extending West along I-94 to its intersection with State Road 149;
- West boundary: Beginning at the intersection of State Road 149 and I-94 and extending North on State Road 149 to the shores of lake Michigan.

- c. **DISTRICT THREE:**
- North boundary: Beginning at the intersection of the West boundary of the Town of Burns Harbor and the South side of West North Boo Road extended East along the South side of West North Boo Road to State Road 149 and thence East along I-94 to the East boundary of the Town of Burns Harbor;
- East boundary: Beginning at the intersection of the East boundary of the Town of Burns Harbor and I-94 and extending South along said East boundary to the South boundary of the Town of Burns Harbor;
- South boundary: Beginning at the intersection of the South boundary and the East boundary of the Town of Burns Harbor and extending West along said South boundary to its intersection with the West boundary of the Town of Burns Harbor;
- West boundary: Beginning at the intersection of the West and South boundaries of the Town of Burns Harbor and extending North along said West boundary to its intersection with the South side of West North Boo Road.

ARTICLE IX

DEPARTMENT OF REDEVELOPMENT

(Ordinance 160, 1/26/2000)

- Sec. 2-34 **1.** The Town Council of the Town of Burns Harbor, Indiana (“Town”), now deems it to be in the best interest of the Town and its citizens to afford a maximum opportunity for rehabilitation, redevelopment or economic development of areas by private enterprise and the Town by establishing a department of redevelopment.
- Sec. 2-35 **2.** The Town Council hereby establishes the Department of Redevelopment of the Town. The Department will be controlled by a board of five (5) members known as the Burns Harbor Redevelopment Commission.
- Sec. 2-36 **3.** Pursuant to the Act all of the territory within the corporate boundaries of the Town will be a taxing district known as the Burns Harbor

- d. Neither of the Town Council appointees referred to in subpoint (b) and (c) above shall be a paid or unpaid municipal officer or employee of the Board.

Sec. 2-41 **SECTION 2: Terms of Appointment:**

- a. The Town Council members shall serve on the Board during that period while they continue to serve on the Burns Harbor Town Council.
- b. One of the Town Council appointees shall serve an initial term on the Board for a two-year period. The remaining Town Council appointee shall serve an initial term on the Board for a three (3) year period.
- c. When the term of the initial appointee to the Board, other than a Burns Harbor Town Council member, has expired, a successor shall be appointed for a term of three (3) years by the Burns Harbor Town Council.

Sec. 2-42 **SECTION 3: Organization of the Board:**

- a. One of the members of the Burns Harbor Town Council shall be selected to act as Chairperson of the Board by a majority vote of the Board.
- b. A Vice Chairperson shall be selected from the Board membership by a majority vote of the Board members.
- c. A Secretary and a Treasurer or, if the Board desires to combine these positions to be filled by one person, a Secretary/Treasurer shall be selected by majority vote of the Board to serve at the pleasure of the Board. The person or persons serving as Secretary and Treasurer need not be a member of the Board.

Sec. 2-43 **SECTION 4: Compensation:**

- a. The members of the Board may be compensated at a level fixed by the Burns Harbor Town Council as either a salary or as a payment for meetings attended. Each Board member is also entitled to payment for reasonable expenses incurred in the performance of his duties from funds appropriated for this purpose by the Burns Harbor Town Council.
- b. The Secretary and Treasurer, or combined position of Secretary/Treasurer, may be compensated for services performed by salary or for meetings attended in an amount fixed by the Burns Harbor Town Council.

Sec. 2-44 **SECTION 5: Bonds for Board Members:** The members of the Board and the Board Treasurer shall be bonded in an amount fixed by the Burns Harbor Town

Council. Said bonds shall be filed with the Porter County Recorder's Office pursuant to I.C. 5-4-5-1.

Sec. 2-45 **SECTION 6: Duties:**

- a. The Board shall be responsible for the construction, acquisition, improvement, operation, and maintenance of the Plant and System. In fulfilling these duties, the Board may enter into contracts or agreement necessary or incidental to or for the benefit of the Plant or System as permitted pursuant to I.C. 36-9-23-1 *et seq.* And undertake all other legal actions which, in its discretion, are required to fulfill its responsibilities under this Ordinance and I.C. 36-9-23-1 *et seq.*
- b. The Board may establish rules and bylaws for its own governance.

Sec. 2-46 **SECTION 7: Effective Date:** This Ordinance shall be effective after passage and publication pursuant to I.C. 5-3-1.

ARTICLE XI

“RAINY DAY FUND”
(Ordinance 179, 11/10/2004)

Sec. 2-47 **SECTION 1: Creation of a Rainy Day Fund:**

There is hereby designated a “Rainy Day Fund” to receive transfers of unused and unencumbered funds raised by a general or special tax levy on taxable property within the Town whenever the purpose of such tax levy has been fulfilled and an unused and unencumbered balance remains.

Sec. 2-48 **SECTION 2: Purposes of the Fund:**

The funds on deposit in the Rainy Day Fund may be used for the operation of the Town and its various departments, when the Town does not have sufficient levies or funds to pay such costs, including, but not limited to, salaries and wages, costs of services, supplies, equipment, capital improvements, repairs and similar expenditures.

Sec. 2-49 **SECTION 3: Transfer to Fund:**

After the last day of the fiscal year and before March 1st of the subsequent calendar year, the Town Council shall determine the amount, if any, of any unused and unencumbered, funds available to be transferred to the Rainy Day Fund, which

transfer may not exceed more than ten percent (10%) of the Town's total budget for that fiscal year.

ARTICLE XII

ESTABLISHING A NON-PAYMENT SERVICE FEE

(Ordinance 180, 12/8/2004)

- Sec. 2-50 The Town of Burns Harbor, has experienced occasions when a check, draft, or order has been returned unpaid and/or dishonored when such documents are made payable to the Town of Burns Harbor or the Office of the Clerk-Treasurer of the Town of Burns Harbor or the Burns Harbor Police Department or the Burns Harbor Park Department, Porter County, Indiana; and
- Sec. 2-51 the Town of Burns Harbor incurs costs and expenses when checks, drafts, and orders aforesaid are received by it and returned unpaid or dishonored by the financial institution upon which the same are drawn; and
- Sec. 2-52 Indiana Code 35-43-5-5 authorizes the Town to assess a service fee to any person or entity presenting a check, draft, or order payable to the Town of Burns Harbor that is returned to the Town unpaid or dishonored, and
- Sec. 2-53 the Town Council of the Town of Burns Harbor now determines it to be in the best interest of the Town and its taxpayers that the Town of Burns Harbor assess a service fee pursuant to Indiana Code 35-43-5-5 for any unpaid or dishonored check, draft, or order payable to the Town of Burns Harbor, or the Office of the Clerk-Treasurer of the Town of Burns Harbor or the Burns Harbor Police Department or the Burns Harbor Park Department.
- Sec. 2-54 Now, therefore, be it ordained, by the Town Council of the Town of Burns Harbor, Porter County, Indiana, pursuant to authority given by Indiana Code 35-43-5-5, and all acts amending the same, that any person or entity presenting a check, draft or order payable to the Town of Burns Harbor, or the Office of the Clerk-Treasurer of the Town of Burns Harbor, or the Burns Harbor Police Department or the Burns Harbor Park Department or the person for whose benefit the instrument was given, which is returned to the Town of Burns Harbor marked "unpaid" or is otherwise dishonored, shall be assessed the additional sum allowable by Indiana law for each returned or dishonored instrument. The charge shall not be considered an interest charge, a finance charge, a time price differential, or any charge of similar nature.