

TITLE III: ADMINISTRATION

Chapter

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Cross-reference:

Board of Zoning Appeals, see §§ 154.130 through 154.135

CHAPTER 30: TOWN COUNCIL

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GENERAL PROVISIONS

§ 30.01 LEGISLATIVE AUTHORITY.

(A) It is declared to be the legislative intent of the Town Council, pursuant to the enactment of this code, to invoke and exercise all lawful powers vested in or incumbent on the Town Council of a town to enact ordinances, and to provide, through legislation, for the governance of the municipal corporation and its governmental jurisdiction, including, but not necessarily limited to, the following powers:

- (1) All powers vested expressly by the Constitution and laws of Indiana;
- (2) All general or residual powers conferred on the governing body of a town by I.C. 36-13, I.C. 36-7-2, I.C. 36-8-2, I.C. 36-9-2, and I.C. 36-10-2, or by any other law; and
- (3) All implied powers incumbent on a municipality through the operation of common law, as are necessary or dispensable to the purposes for which a municipal corporation is created.

(B) Whenever any provision of this code is a provision of any ordinance enacted prior to the enactment or taking effect of this code, whether included in original or in substantially restated form, the provision is intended, and shall be construed, to have been reaffirmed and re-enacted concurrently with the enactment of this code; and shall be interpreted and applied in light of the above described powers as they are now in effect and incumbent on or vested in the Town Council, irrespective of whether any provision could or might have been held invalid at the time it was originally enacted for want of then lawful authority of the Town Council to have enacted the provision at that time.

(1991 Code, § 30.01)

*MEETINGS***§ 30.15 MOTIONS.**

Any member of the Board has the right to make a motion, or second a motion, as he or she sees fit. Also, any member of the Board can ask for, and must have, a vote on an issue by voice vote at that time, if it is requested.

(Res. 89-01, passed 2-6-1989)

§ 30.16 MEETINGS DURING EMERGENCIES.

(A) During emergency situations, the President of the Town Board may order, or in his or her stead, his or her designee, that other members of the Rome City Town Board may, if they so choose, attend such meeting telephonically or through whatever other communications device is made available to them, so long as said communication permits the individual board member to hear, be heard at the public meeting site, and respond in real time as the meeting is being conducted. This may be telephonic, it may be dial-in conference calls, or video conferencing, depending upon the technology available, and the individual board member's access thereto. The requirement being the ability of the Town Board member to hear, be heard at the public meeting site, and respond in real time as to what is occurring at the meeting.

(B) If the public and the press be permitted to attend the meeting in person, the maximum number of attendees shall not exceed the number expressly permitted by any executive order of the Governor, or any other health authority of the state and/or county, and further, that if a number in excess of such number were to occur, alternative provisions will be made so as to ascertain that even if an attendee is not in the same place as the board member running the meeting, that they have access to hear what is being said, and an access to remotely participate through the use of the best technology available and at the town's disposal. This use of technology is not intended to be in place of the public's right to attend in person, but merely in case the public appearance is greater than that recommended by the health authority having jurisdiction over said meeting.

(C) The Town Council is further given the authority to take other actions reasonably necessary to further the conduct of meetings during an emergency situation as necessary in a manner consistent with the safety not only of themselves, but the general public.

(Ord. 2020-01, passed 4-13-2020)

CHAPTER 31: TOWN OFFICIALS

Section

General Provisions

- 31.01 Powers and duties
- 31.02 Delegation of ministerial power or function

Clerk-Treasurer

- 31.15 Authority to hire clerical assistant

Elections

- 31.30 Appointment of officials
- 31.31 Claims for expenses and salaries
- 31.32 Town Council to be elected by voters at large

GENERAL PROVISIONS

§ 31.01 POWERS AND DUTIES.

(A) All officers, officials, boards, commissions, or other official entities of the town government shall be construed to have:

(1) All powers or duties prescribed for, or conferred on, any particular officer, official, board, commission, or other official entity by statute;

(2) All powers or duties expressly prescribed or conferred thereon by a provision of this code; and

(3) All powers or duties implied by the nature of, and necessary or indispensable to the proper and efficient fulfillment of, their governmental or corporate function or duties of office, including, but not necessarily limited to, the power to prescribe administrative rules or procedures for the governance of their respective offices, departments, agencies, or functions to the extent not inconsistent with, nor

preempted by, a provision of this code, or a statute, or by an applicable and mandatory state or federal administrative regulation.

(B) To the extent provided by this section, the fact that a particular power or duty is not expressly set forth in this code and conferred on an officer, official, board, commission, or other official entity does not of itself imply that the power or duty does not exist or has been considerably denied or withheld.

(1991 Code, § 31.01)

§ 31.02 DELEGATION OF MINISTERIAL POWER OR FUNCTION.

(A) Any purely ministerial power or function vested in any officer, board, commission, or other entity by a provision of this code may be delegated to, and exercised or performed by, a deputy or other authorized agent or representative of the authority in whom the ministerial power or function is vested; except that no person shall be permitted to receive or handle public funds or other monies in the custody of the town, unless they are properly bonded or expressly so authorized by law.

(B) The delegation of a ministerial power or function does not relieve the principal authority in whom it is vested of responsibility for proper and timely performance.

(C) Any power or function vested in an officer, board, commission, or other entity which involves the exercise of an official discretion shall be performed or exercised only by or under the immediate supervision of the authority in whom it was vested, and it may not be delegated unless a provision of this code or law expressly so permits.

(1991 Code, § 31.02)

CLERK-TREASURER

§ 31.15 AUTHORITY TO HIRE CLERICAL ASSISTANT.

The Clerk-Treasurer:

(A) Shall have the authority to hire a person to fill the position of clerical assistant in the Clerk-Treasurer's office; and

(B) Shall have the authority to designate the hours the person shall work.

(Ord. 88-10, passed 8-1-1988)

ELECTIONS

§ 31.30 APPOINTMENT OF OFFICIALS.

The Town Election Board shall appoint the precinct election officials necessary for the conduct of town elections, including an Inspector, two Judges, two Clerks, and any other election officials required to be provided by law or ordinance.

(1991 Code, § 36.01) (Ord. 83-2, passed 8-19-1983)

§ 31.31 CLAIMS FOR EXPENSES AND SALARIES.

All claims for election expenses and salaries of election officials shall be filed with and verified by the Clerk-Treasurer, and then approved by the Town Election Board, before payment is made.

(1991 Code, § 36.02) (Ord. 83-2, passed 8-19-1983)

§ 31.32 TOWN COUNCIL TO BE ELECTED BY VOTERS AT LARGE.

Pursuant to I.C. 36-5-2-4.1 and I.C. 36-5-2-5 as amended, all prior laws establishing that members of the Town Council are to be elected by districts are hereby repealed and abolished. All members of the Town Council shall be elected at large by the voters of the whole town.

(1991 Code, § 36.03) (Ord. 90-04, passed 4-23-1990)

CHAPTER 32: TOWN ORGANIZATIONS

Section

Plan Commission

- 32.01 Establishment
- 32.02 Membership; appointment
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Department of Parks and Recreation

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Economic Development Commission

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Rome City Conservancy District

- 32.70 Rome City Conservancy District

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- 32.85 Establishment
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- 32.87 Appointment of members; terms of office

Cross-reference:

Board of Zoning Appeals, see §§ 154.130 et seq.

PLAN COMMISSION**§ 32.01 ESTABLISHMENT.**

There is hereby established an advisory Plan Commission for the town, pursuant to the Advisory Planning Law of Indiana, I.C. 36-7-4-200 series, with the powers and duties prescribed therein. The Plan Commission's legal name shall be "Rome City Plan Commission."
(1991 Code, § 32.01) (Ord. 68-2, passed 2-26-1968)

§ 32.02 MEMBERSHIP; APPOINTMENT.

The Rome City Plan Commission shall consist of seven or nine members appointed in the following manner and for the following terms.

(A) *Town government members.* The Town Council shall, by a majority vote, appoint three members to the Plan Commission from the town government, whose terms of office on the Plan Commission shall be concurrent with their terms of office in the town government. However, if any appointee is a member of the Town Council, a member of the Park Board, or an officer or one of the personnel of the town who does not have a fixed and definite term of office, then the Town Council, at its first regular meeting of each year, may appoint another member of the town government to the Plan Commission to replace that member.

(B) *Citizen members.* The President of the Town Council shall appoint four citizen members to the Plan Commission, not more than two of whom shall be members of the same political party, and who shall be qualified by knowledge and experience in matters pertaining to the development of the town, and who shall hold no other municipal, county, or state office, and who shall be residents of the town. Thereafter, as the terms expire, each new appointment or reappointment shall be for a term of four years, expiring on the first Monday in January of each fourth year thereafter.

(C) *Extraterritorial members.* During any period of time when the town exercises extraterritorial planning and zoning jurisdiction pursuant to I.C. 36-7-4-205, two additional citizen members shall be appointed to the Plan Commission in the manner prescribed by this division. These citizen members

shall be residents of the extraterritorial area wherein jurisdiction is exercised, shall hold no other municipal, county, or state office, and shall not be members of the same political party. The two extraterritorial members shall be appointed by the Judge of the Circuit Court for Noble County if the appointment is made before January 2, 1984; but by a majority vote of the Board of Commissioners of Noble County if the appointment is made on or after January 2, 1984; and shall have the same qualifications of knowledge and experience of development matters in the community as for citizen members from the town. Citizen members of the Plan Commission appointed under this division shall be appointed for the following terms. Each appointment or reappointment shall be made by the

appointing authority having power over the appointment for a term of four years expiring on the first Monday in January of the fourth year following that in which the prior term expired.
(1991 Code, § 32.02) (Ord. 68-2, passed 2-26-1968; Am. Ord. 83-15, passed 11-7-1983)

§ 32.03 REPLACEMENT; CERTIFICATE OF APPOINTMENT.

(A) At least ten days prior to the date when the term of any member of the Plan Commission is due to expire, as provided in § 32.02 above, it shall be the duty of the Secretary of the Plan Commission to send written notice to the appointing authority having the power to reappoint or replace that member that his or her term is about to expire. On the date when the member's term expires, or as soon thereafter as possible, the appointing authority shall either reappoint the member to a new term or shall appoint another person having the proper qualifications to replace the member whose term has expired. Upon making the appointment or reappointment, and as provided by I.C. 36-7-4-212, a written certificate of appointment shall be sent to the Plan Commission:

(1) By the Clerk-Treasurer, in the case of a membership appointed by the Town Council pursuant to § 32.02(A) above;

(2) By the President of the Town Council, in the case of a membership appointed by him or her pursuant to § 32.02(B) above; or

(3) By the Judge of the Circuit Court, in the case of a membership appointed by him or her pursuant to § 32.02(C) above if prior to January 2, 1984, or by the Noble County Auditor, in the case of a membership appointed by the Board of County Commissioners on or after January 2, 1984.

(B) The Secretary of the Plan Commission shall keep and include all certificates of appointment in the records of the Plan Commission. However, in the event that any appointing authority fails to make a timely new appointment or reappointment, the member whose term has expired shall continue to serve for as long as necessary, but shall not be considered to have been approved for a new term. When a member thus continues to serve beyond the expiration of his or her term, it does not compromise or invalidate any action taken by that member that the Secretary of the Plan Commission may have failed to give notice of the expiration of the member's terms as heretofore provided.

(1991 Code, § 32.03) (Ord. 68-2, passed 2-26-1968; Am. Ord. 83-15, passed 11-7-1983)

§ 32.04 VACANCIES.

(A) A vacancy shall be considered to exist on the Plan Commission whenever any member:

(1) Is deceased;

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(2) Ceases to be a member of the town government, moves his or her residence, alters his or her partisan political affiliation, or is elected to or accepts appointment to municipal, county, or state office, and the change contravenes the qualifications and conditions of his or her appointment;

(3) Is removed from membership as hereafter provided; or

(4) Submits a letter of resignation to the appointing authority having appointed him or her, subject to any effective date set forth in the letter.

(B) When a vacancy occurs under divisions (A)(1) or (A)(2) above, the Secretary shall give notice to the vacating member's appointing authority in the same manner as though the member's term had expired. When a vacancy exists, the appointing authority having power of appointment over that membership shall forthwith, or as soon thereafter as possible, appoint a new member with the appropriate qualifications who shall serve the remainder of the vacating member's term.

(1991 Code, § 32.04) (Ord. 68-2, passed 2-26-1968; Am. Ord. 83-15, passed 11-7-1983)

§ 32.05 REMOVAL.

(A) Once appointed and qualified, a member of the Plan Commission serves for a definite term and may not be removed, except for proper legal cause. Proper legal cause includes malfeasance or misfeasance in office, incapacity to perform the duties of office, or neglect of the duties of office. It is not proper cause that an appointing authority disapproves of a member for personal or political reasons, or disapproves of a particular action that a member has taken or plans to take. If an appointing authority finds that there exists proper legal cause to remove an appointee, the appointing authority may send written notice of removal to the home address of the member stating the reason for removal and a copy thereof to the Secretary of the Plan Commission. A member may appeal the removal to the Circuit or Superior Court within 30 days of receipt of the notice of removal and, if the member files written notice of intent to appeal with the Plan Commission and the appointing authority, the member shall continue to serve, and a vacancy does not exist, pending the outcome of the appeal, or until the end of the 30-day period and the member is found not to have filed an appeal.

(B) This section does not apply to, and does not restrict the removal of, any member described by § 32.02(A) in the manner provided by § 32.02(A) above.

(1991 Code, § 32.05) (Ord. 68-2, passed 2-26-1968; Am. Ord. 83-15, passed 11-7-1983)

§ 32.06 OFFICERS.

(A) At its first regular meeting each year, the Plan Commission shall elect a President and a Vice President from among its members.

(B) The Vice President shall preside whenever the President is absent or disqualified, or if the office of President is vacant. If both offices are vacant, the Plan Commission shall meet under an interim chairperson and shall elect a new President and Vice President.

(C) The Plan Commission shall also elect or appoint a Secretary, who may be a member of the Commission or some other person.
(1991 Code, § 32.06) (Ord. 68-2, passed 2-26-1968; Am. Ord. 83-15, passed 11-7-1983)

DEPARTMENT OF PARKS AND RECREATION

§ 32.20 ESTABLISHMENT.

Under the provisions of I.C. 36-10-3, there is hereby created a municipal Department of Parks and Recreation.
(Ord. 95-02, passed 7-10-1995)

§ 32.21 PARKS AND RECREATION BOARD.

(A) *Appointment.* The Parks and Recreation Board (Park Board or the Board) shall be composed of four members appointed by the executive on the basis of their interest in and knowledge of parks and recreation. No more than two members shall be of the same political party.

(B) *Terms.* As a term expires, each new appointment shall be made by the Town Council President for a term of four years. All terms expire on the first Monday in January, but a member shall continue in office until his or her successor is appointed. If an appointment for a new term is not made by the executive by the first Monday in April, the incumbent shall serve another term. If a vacancy occurs, the executive shall appoint a new member for the remainder of the unexpired term.

(C) *Officers.* At its first regular meeting in each year, the Board shall elect a President and Vice President. The Vice President shall have authority to act as the President of the Board during the absence or disability of the President. The Board may select a Secretary from within or without its own membership.

(D) *Powers.* The Board shall have the power to perform all acts necessary to acquire and develop sites and facilities, and to conduct the programs as are generally understood to be Parks and Recreation functions. In addition, the Board shall have all the powers listed in I.C. 36-10-3 *et seq.*
(Ord. 95-02, passed 7-10-1995)

§ 32.22 SUPERINTENDENT; STAFF.

The Superintendent of Parks and Recreation shall be appointed by, and serve at the pleasure of, the Park Board. The Superintendent shall have at least the qualifications prescribed by I.C. 36-10-313(d), and other qualifications as the Park Board requires. However, if the position of Superintendent is vacant and no person can be found having the prescribed qualifications, the Park Board may appoint an acting

Superintendent having lesser qualifications until a fully qualified person can be found for the position. The Park Board may itself appoint other personnel, or may authorize the Superintendent to make other appointments; and the personnel are subject to budgeting and appropriation by the Town Council in the same manner as for other town personnel.

(1991 Code, § 32.22) (Ord. 77-2, passed 5-16-1977; Am. Ord. 83-15, passed 11-7-1983)

§ 32.23 BUDGET; GIFTS.

The Board shall prepare and submit an annual budget in the same manner as other departments of city government, as prescribed by the State Board of Accounts. The Board may accept gifts, donations, and subsidies for Parks and Recreation purposes.

(Ord. 95-02, passed 7-10-1995)

§ 32.24 NONREVERTING FUNDS.

(A) *Park and Recreation Nonreverting Donation Fund.* Pursuant to I.C. 36-10-3-18(b), there is hereby created a special nonreverting fund to be known as the "Park and Recreation Nonreverting Donation Fund" (PRND Fund) into which the Clerk-Treasurer shall receipt and deposit, upon acceptance by the Park Board, all cash gifts, donations, bequests, endowments, and grants for Parks and Recreation purposes. Within the PRND Fund, the Clerk-Treasurer shall set up individual accounts for each donation, and subaccounts if necessary, and shall determine and apply a suitable system of account labeling and memoranda sufficient to limit authorization and expenditure, and to provide a detailed accounting thereof, in accordance with the intent, conditions, and requirements of the donor or grantor. Monies credited to each account may only be expended for the purpose or purposes intended by the donor or grantor, and only upon a proper claim allowed and endorsed by the President and Secretary of the Park Board. If the donor or grantor has set forth a specific and well-defined purpose for which monies are to be expended, the specification shall be considered a lawful appropriation of the monies, and the same may be expended for that purpose without further budgeting and appropriation; otherwise, expenditures from the PRND Fund shall be included in the annual budget and appropriated by the Town Council, which shall give due consideration to the general intent of the donor or grantor. In the event that the specific purpose for which a donation or grant is dedicated has been accomplished or has ceased to exist without expending all of the monies, and if the donor or grantor has not stipulated that unexpended monies be refunded, any residue shall be transferred to the Park and Recreation Nonreverting Operating Fund or Nonreverting Capital Fund, as the Park Board determines.

(Ord. 77-2, passed 5-16-1977)

(B) *Capital Fund; Operating Fund.* Pursuant to I.C. 36-10-3-22, there is hereby created a Nonreverting Capital Fund and Nonreverting Operating Fund for the sole use of the Rome City Park Board for Parks and Recreation purposes.

(1) *Park and Recreation Nonreverting Capital Fund.*

(a) The Nonreverting Capital Fund monies shall be used solely for the purposes of acquiring land or making specific capital improvements. The following Parks and Recreation revenues and receipts shall be deposited by the Clerk-Treasurer in the Nonreverting Capital Fund, if so determined and directed by the Park Board as hereafter provided.

1. Monies received from the sale of surplus property under the authority and control of the Park Board.
2. Monies received from user charges from major Parks and Recreation facilities and programs.
3. Monies received from other Parks and Recreation fees not from major facilities or programs.
4. Surplus monies transferred from the Park and Recreation Nonreverting Donation Fund.

(b) All proposed expenditures from the Nonreverting Capital Fund must be included in the annual budget and appropriated by the Town Council. Monies may be expended from the Nonreverting Capital Fund only subject to sufficient appropriation and upon a proper claim allowed and signed by the President and Secretary of the Park Board.

(2) *Park and Recreation Nonreverting Operating Fund.* All other revenues from Parks and Recreation operations and the sale of surplus property not required to be deposited in the Nonreverting Capital Fund pursuant to division (C) below, or in a debt service fund pursuant to the issuance of any park district revenue bonds, shall be deposited by the Clerk-Treasurer in the Park and Recreation Nonreverting Operating Fund. The monies in the Nonreverting Operating Fund shall be used for the normal operating expenses of the Department of Parks and Recreation. Insofar as possible, proposed expenditures from the Nonreverting Operating Fund shall be included in the annual budget and appropriated by the Town Council. However, if, during the budget year, any unusual and unanticipated operating expenditures are required for Parks and Recreation purposes, the Park Board is hereby authorized, as provided by I.C. 36-10-3-22(b)(1), to make further appropriations from the fund as necessary, provided that the total of all appropriations from the fund for the budget year do not exceed the total of monies on deposit or yet anticipated to be receipted from the year. Any further appropriation shall be made by a resolution duly adopted by the Park Board, and must be certified by the Clerk-Treasurer for conformity with these provisions before the resolution and appropriation become effective. Monies in the Nonreverting Operating Fund may only be expended subject to sufficient appropriation by the Town Council or by the Park Board as heretofore provided, and only upon a proper claim allowed and signed by the President and Secretary of the Park Board.

(C) *Allocation of revenues.* Authority is hereby delegated and transferred by the Town Council, as the fiscal body of the town, to the Park Board to act for the Town Council in making the determination described in I.C. 36-10-3-22(b) respecting the allocation of revenues from major Parks

and Recreation facilities and programs between the Nonreverting Capital Fund and the Nonreverting Operating Fund, and the determination by the Park Board shall have the same force and authority as though it had been made by the Town Council. Each year, prior to the submission of the Park Department budget, the Park Board shall by resolution determine and fix the fees and revenues, or a proportion thereof, from Parks and Recreation operations and programs, and from anticipated sale of surplus property, during the ensuing budget year which are to be deposited in the Nonreverting Capital Fund, and which are to be deposited instead in the Nonreverting Operating Fund, as provided by division (B) above. The estimate of revenues for each fund submitted with the budget shall reflect this allocation. The Park Board may amend the resolution, but only to the extent that the amendment would not cause the anticipated revenues for either fund to fall below those anticipated for the fund in the approved and certified budget.

(Ord. 78-8, passed 10-2-1978)

(1991 Code, § 32.24) (Am. Ord. 83-15, passed 11-7-1983)

ECONOMIC DEVELOPMENT COMMISSION

§ 32.40 ESTABLISHMENT.

The Rome City Town Council hereby approves the creation of a Department of Economic Development, which shall be called the "Rome City Economic Development Commission."

(1991 Code, § 32.40) (Res. 82-11, passed 12-6-1982; Am. Ord. 83-1, passed 2-7-1983; Am. Ord. 83-15, passed 11-7-1983)

§ 32.41 APPOINTMENT OF COMMISSIONERS.

(A) The Economic Development Commission shall consist of three Commissioners who shall be appointed by the President of the Town Council from nominees selected in the manner hereafter indicated. A nominating authority may propose more than one nominee for the consideration of the President of the Town Council, and he or she may select among them at his or her discretion. Commissioners shall be nominated and appointed in the following manner, and shall serve for the indicated terms.

(1) One Commissioner is appointed by the President of the Town Council solely at his or her own choice, without other nomination. All reappointments or new appointments shall be for a term of four years reckoned from the date of expiration of the prior term.

(2) One Commissioner is appointed as a nominee, or from among a list of nominees, selected jointly by all of the members of the Town Council. All reappointments or new appointments shall be for a term of four years reckoned from the date of expiration of the prior term.

(3) One Commissioner is appointed as a nominee, or from among a list of nominees, selected by the County Council. All reappointments shall be for a term of four years reckoned from the date of expiration of the prior term.

(B) At least 25 days prior to the expiration of the term of any Commissioner described in divisions (A)(2) or (A)(3) above, the town Clerk-Treasurer shall give notice to the nominating authority that the term is about to expire, and, within 15 days of the notice, the nominating authority shall submit one or more nominations to fill the position. An incumbent may be renominated. The President of the Town Council shall make an appointment within ten days of receiving the nominations. However, if any nominating authority fails to submit timely nominations as heretofore provided, the President of the Town Council may make an appointment to fill the position at his or her own discretion in the manner provided by division (A)(1) above. If a new appointment or reappointment is not made for any reason, or if an appointee fails to qualify, by the expiration of an incumbent's term, the incumbent Commissioner shall continue to serve for as long as necessary, but shall not be considered to have been reappointed for a new term; and provided further that any action taken by the continuing Commissioner is not compromised nor invalidated by the fact that any notice, nomination, or appointment was not given or made in a timely manner.

(1991 Code, § 32.41) (Ord. 83-1, passed 2-7-1983; Am. Ord. 83-15, passed 11-7-1983)

§ 32.42 QUALIFICATIONS OF COMMISSIONERS; CERTIFICATE.

A Commissioner of the Economic Development Commission may be an officer or employee of the town, but all shall be residents of the town; except that a nonresident may be nominated and appointed pursuant to § 32.41(A)(3) above, but that person shall be a resident of Noble County. Commissioners shall be selected on the basis of their knowledge of and interest in economic development matters. Upon making an appointment, the President of the Town Council shall send a written notice of appointment to the home address of the appointee, who within 10 days thereafter shall take and subscribe an oath upon his or her certificate of appointment as provided by I.C. 36-7-12-11, which certificate and oath shall then be filed with the town Clerk-Treasurer.

(1991 Code, § 32.42) (Ord. 83-1; passed 2-7-1983; Am. Ord. 83-15, passed 11-7-1983)

§ 32.43 VACANCIES; REMOVAL.

(A) A vacancy exists on the Economic Development Commission if any Commissioner:

(1) Is deceased;

(2) Fails to take the oath of office prescribed by § 32.42 above within ten days of receiving notice of appointment;

(3) Submits a letter of resignation to the President of the Town Council, subject to any effective date stipulated therein;

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(4) Moves his or her residence or accepts office or appointment as an employee of the town, and the change contravenes the qualifications and conditions of his or her appointment as a Commissioner; or

(5) Is removed from office as hereafter provided.

(B) (1) When a vacancy on the Commission occurs, a new Commissioner shall be nominated and appointed to fill the vacancy for the remainder of the vacating member's term in the same manner as the vacating member's position was originally subject to nomination and appointment. The Clerk-Treasurer shall give notice to the appropriate nominating authority that a vacancy exists.

(2) A Commissioner may be removed from office by order of the nominating authority having the power to nominate a member for his or her position, but may only be removed for proper legal cause.

(3) A Commissioner may appeal the removal in the manner prescribed by I.C. 36-7-12-14, and, if notice of intent to appeal is filed with the nominating authority within three days of the order of removal, a vacancy does not exist pending the outcome of the appeal, provided that the appeal is actually filed within 30 days.

(1991 Code, § 32.43) (Ord. 83-1, passed 2-7-1983; Am. Ord. 83-15, passed 11-7-1983)

HOUSING AUTHORITY**§ 32.55 ESTABLISHMENT.**

(A) Pursuant to I.C. 36-7-19, the Town Council, upon due notice, having held a public hearing whereat an opportunity to be heard was granted to all residents and taxpayers of the town and to all other interested persons; and having considered the evidence and testimony presented at the public hearing and of their own personal knowledge of dwelling accommodations; do hereby declare that unsafe and unsanitary dwelling accommodations exist in the town, and that there is a need for a housing authority to function in the town; wherefor the Housing Authority is hereby created.

(B) The name of the housing authority shall be the "Rome City Housing Authority."
(1991 Code, § 32.55) (Res. 80-2, passed 5-5-1980; Am. Res. 81-3, passed 3-2-1981; Am. Ord. 83-15, passed 11-7-1983)

§ 32.56 APPOINTMENT OF COMMISSIONERS; TERMS OF OFFICE; CERTIFICATE OF APPOINTMENT.

(A) *Appointment.*

(1) Pursuant to I.C. 36-7-18-5, the Town Council shall appoint as Commissioners of the Housing Authority seven persons, one of whom must be a person directly assisted by the Housing Authority, and no more than four of whom may be of the same political party.

(a) Subsequent appointments to the Authority shall be made in the same manner.

(b) A Commissioner must be a resident of the town.

(2) Pursuant to I.C. 36-7-18-6, a Commissioner may not be an officer or employee of the town.

(B) *Terms of office (I.C. 36-7-18-7).*

(1) The Town Council appointed the first Commissioners of the Housing Authority and fixed their terms as follows:

(a) For one Commissioner, one year expiring on September 10, 1980;

(b) For one Commissioner, two years expiring on September 10, 1981;

(c) For one Commissioner, three years expiring on September 10, 1982; and

(d) For two Commissioners, four years expiring on September 10, 1983.

(2) The Town Council's appointment of the two new commissioners have fixed the terms as follows:

(a) For one Commissioner, one year expiring on September 10, 2008; and

(b) For the other Commissioner, two years expiring on September 10, 2009.

(3) (a) After which, all appointments to the Authority are for a term of four years, except that all vacancies shall be filled for the unexpired term.

(b) A commissioner serves until his successor is appointed and qualified.

(C) *Certificate of appointment.* Pursuant to I.C. 36-7-18-7, a certificate for the appointment or reappointment of a Commissioner of the Housing Authority must be filed with the town Clerk-Treasurer. The certificate is conclusive evidence of the proper appointment of the Commissioner.

(1991 Code, § 32.56) (Res. 79-10, passed 9-10-1979; Am. Ord. 83-15, passed 11-7-1983; Am. Ord. 2007-11, passed 9-10-2007)

§ 32.57 VACANCIES; REMOVAL.

(A) A vacancy on the Housing Authority exists if a Commissioner:

(1) Is deceased;

(2) Moves his or her residence or becomes an officer or employee of the town, and the change contravenes the qualifications and conditions of his or her appointment;

(3) Submits a letter of resignation to the Town Council, subject to any effective date stipulated therein; or

(4) Is removed from office as hereafter provided.

(B) (1) A vacancy shall be filled as soon as possible by means of the Town Council appointing a new Commissioner to serve the remainder of the vacating Commissioner's term.

(2) All persons appointed as Commissioners shall be given a certificate of appointment, which shall be filed with the Clerk-Treasurer.

(3) A Commissioner may be removed from the Housing Authority, but only for legal cause and in accordance with the procedures prescribed by I.C. 36-7-18-9.

(1991 Code, § 32.57) (Res. 79-10, passed 9-10-1979; Am. Ord. 83-15, passed 11-7-1983)

§ 32.58 COMPENSATION TO COMMISSIONERS.

A Commissioner's compensation shall be a per diem allowance of \$25 for attending meetings of the Housing Authority and reimbursement for necessary expenses with maximum allowance per month of \$50. All travel reimbursement will be at the government allowed per diem rate. A PHA (Public Housing Authority) should, however, use discretion in making excessive payments to Commissioners.

(Ord. 95-01, passed 5-8-1995)

§ 32.59 RELATIONSHIP OF TOWN TO HOUSING AUTHORITY.

(A) The Town Council and officers of the town are authorized to exercise, as necessary and appropriate, any or all of the powers described under I.C. 36-7-19-2 through I.C. 36-7-19-5 to aid and assist the Housing Authority to perform its functions and carry out the purposes for which it was created. However, the Housing Authority shall not initiate any projects without the expressed approval of the Town Council.

(B) The Town Council transfers to the Housing Authority the authority to select the site, acquire property, and provide for the development of low and moderate income housing in conjunction with the Community Development Block Grant Program.

(Res. 79-17, passed 12-3-1979)

(1991 Code, § 32.59) (Am. Ord. 83-15, passed 11-7-1983)

ROME CITY CONSERVANCY DISTRICT

§ 32.70 ROME CITY CONSERVANCY DISTRICT.

The Rome City Conservancy District is a separate governmental agency set up through the court and originally appointed by the County Commissioners. The District now holds yearly elections for Board members.

(Ord. 93-07, passed 11-8-1993; Am. Ord. 04-02, passed 1-12-2004; Am. Ord. 2007-11, passed 9-10-2007)

DEPARTMENT OF REDEVELOPMENT

§ 32.85 ESTABLISHMENT.

A department of redevelopment is hereby established in the Town of Rome City, Indiana, to be known as the “Town of Rome City Department of Redevelopment” and shall be controlled by a board of five members to be known as the “Town of Rome City Redevelopment Commission”.

(Ord. 2012-01, passed 1-9-2012)

§ 32.86 POWERS.

The Town of Rome City Redevelopment Commission shall operate with all the powers, obligations and privileges authorized under the I.C. 36-7-14 (the Act) as the same is presently in force and effect, or as it may be amended from time to time.

(Ord. 2012-01, passed 1-9-2012)

§ 32.87 APPOINTMENT OF MEMBERS; TERMS OF OFFICE.

The members of the Redevelopment Commission (and any nonvoting advisor as required by the Act) shall be appointed, serve, and be removed, as set forth in the Act, and each member shall take and subscribe an oath of office and execute a bond, all as required by the Act.
(Ord. 2012-01, passed 1-9-2012)

CHAPTER 33: POLICE DEPARTMENT; POLICE FUNDS

Section

Deputy Reserves Unit

33.01 Deputy Reserves Unit

Police Funds

33.15 Firearms application fee

33.16 Police report fee

33.17 Out-of-state vehicle verification; fee

33.18 Law Enforcement Continuing Education Fund

Cross-reference:

Town personnel policies specific to Town Marshals, see §§ 34.71 et seq.

DEPUTY RESERVES UNIT

§ 33.01 DEPUTY RESERVES UNIT.

(A) There is hereby created a Deputy Reserves Unit to assist the Town Marshal to protect the citizens of the town.

(B) The name of the reserves unit shall be the “Rome City Deputy Reserves Unit,” and it shall be governed by the following administrative rules and policies:

(1) Members of the Deputy Reserves Unit will abide by the United States Constitution and the Constitution of the State of Indiana;

(2) Each member must be sworn in by the Clerk-Treasurer prior to performing any duty as a law officer within the town;

(3) Each member must undergo a training and probation period in accordance with rules and regulations to be established by the Town Marshal;

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(4) The Deputy Reserves Unit shall be under the supervision of the Town Marshal and the Town Council; and

(5) The Deputy Reserves Unit shall be separate in financing from the town and shall not be dependent on the town for any monies.

(1991 Code, § 33.01) (Res. 80-4, passed 5-23-1980; Am. Ord. 83-15, passed 11-7-1983)

POLICE FUNDS

§ 33.15 FIREARMS APPLICATION FEE.

(A) Pursuant to I.C. 35-47-2-3, Sec. 3, the Police Department is hereby authorized to take applications for handgun licenses, and to collect an application fee as follows:

<i>License Type</i>	<i>Local Fee</i>
Five-year hunting and target	\$0/\$0 refundable*
Five-year personal protection	\$0/\$0 refundable*
Lifetime hunting and target / no current license	\$50/\$30 refundable*
Lifetime hunting and target / current valid Indiana license	\$40/\$30 refundable*
Lifetime personal protection / no current license	\$50/\$30 refundable*
Lifetime personal protection / current valid Indiana license	\$40/\$30 refundable*
*A portion of the local fee is refundable if a license is not issued.	

(B) The application fees collected shall be deposited by the Town Clerk-Treasurer into the Police Department’s “Law Enforcement Continuing Education Fund,” and shall be used exclusively for that purpose, pursuant to I.C. 5-2-8-6, which states that the money can be used for continuing education and training of law enforcement officers, and for equipment and supplies for law enforcement purposes.

(1991 Code, § 33.02) (Res. 81-6, passed 10-5-1981; Am. Ord. 83-15, passed 11-7-1983; Am. Ord. 03-07, passed 12-8-2003; Am. Ord. 06-06, passed 10-9-2006; Am. Ord. 2020-07, passed 7-13-2020)

§ 33.16 POLICE REPORT FEE.

(A) The Police Department has hereby established that there will be a rate of \$5 charged for each motor vehicle accident report copy given to persons asking for such copies, as provided for by state law. These monies shall be deposited in the Law Enforcement Continuing Education Fund.

(B) For copies of other disclosed police reports, including but not limited to those required to be disclosed pursuant to I.C. 5-14-3-5. A charge of \$5 shall be collected for each report and deposited in the Law Enforcement Continuing Education Fund.

(1991 Code, § 33.03) (Ord. 81-9, passed 11-2-1981; Am. Ord. 03-07, passed 12-8-2003; Am. Ord. 06-06, passed 10-9-2006)

§ 33.17 OUT-OF-STATE VEHICLE VERIFICATION; FEE.

Whenever the Office of the Town Marshal is requested to verify the title and registration of an out-of-state motor vehicle, pursuant to the registration of the vehicle, boat or trailer in Indiana, a fee of \$5 shall be paid to the Clerk-Treasurer or to the office of the Town Marshal, by the person making the request before the verification is performed. The fee is nonrefundable, and shall be deposited in the Law Enforcement Continuing Education Fund.

(1991 Code, § 33.04) (Ord. 83-18, passed 12-5-1983; Am. Ord. 03-07, passed 12-8-2003)

§ 33.18 LAW ENFORCEMENT CONTINUING EDUCATION FUND.

The receipts from the fees credited by the Police Law Enforcement Continuing Education Fund may be budgeted and appropriated for police equipment and training or to subsidize the general operating budget of the Town Marshal's Office.

(Ord. 03-07, passed 12-8-2003)

CHAPTER 34: TOWN EMPLOYEES

Section

General Provisions

- 34.01 General information
- 34.02 General employment classifications

Equal Employment Opportunity and Sexual Harassment Policies

- 34.11 Equal employment opportunity policy
- 34.12 Sexual harassment policy

Hours of Work and Compensation

- 34.21 Hours of work
- 34.22 Attendance policy
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Miscellaneous Policies

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Drug and Alcohol Testing

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- 34.82 Conduct unbecoming an officer
- 34.83 Performance to standards
- 34.84 Failing to cooperate or be truthful

Cross-reference:

Police Department, see Ch. 34

GENERAL PROVISIONS**§ 34.01 GENERAL INFORMATION.**

(A) The policies and provisions contained in this chapter shall apply to all town employees, except to the extent that specific procedures or conditions of employment, benefits and compensation for certain employees are expressly provided for by a local ordinance or department policy approved by the Town Council, after the amendment date shown herein, preemptive state law, or preemptive federal law which shall control.

(B) Except to the extent otherwise required by state statute, employment with the town is “at-will” and can be terminated by either party to the employment relationship at any time, with or without prior notice, and for any reason, with or without cause.

(1) Any oral statements, promises or assurances contrary to the “at-will” status of each employee are not binding on the town, and may not be relied upon by any employee or job applicant.

(2) If you believe assurances of employment for a specific time or continued employment have been made, contact the Town Council for clarification.

(3) The town shall not be responsible for, or be bound by, any statements, promises or assurances that are not confirmed in writing by the Town Council.

(C) Statements or representations made or contained in any employment application, prospective employee interview, handbook, training manual or any other written policy or procedure do not constitute or imply an employment agreement, and should not be relied upon by the employee or employment applicant under any circumstances that are contrary to the town’s “at-will” employment policy.

(D) This chapter cannot anticipate every situation or answer every question about employment with the town.

(1) It is not an employment contract and is not intended to create contractual obligations of any kind.

(2) In order to retain necessary flexibility in the administration of policies and procedures, the town reserves the right to change, revise or eliminate any of the policies and/or benefits described in this chapter.

(3) The policies stated in this chapter supersede any prior ordinances or written policies of the town that are inconsistent with its provisions.

(Ord. 2007-07, passed 7-2-2007)

§ 34.02 GENERAL EMPLOYMENT CLASSIFICATIONS.

All personnel of the town shall be designated and classified as full-time, part-time or seasonal.

(A) *Full-time employee.* Any municipal employee working 32 hours or more per week, and for a period of more than 12 weeks consecutively, will be considered a full-time employee of the town, and will receive all benefits listed hereafter for full-time employees.

(B) *Part-time employee.* Any municipal employee working less than 32 hours per week for more than 16 weeks consecutively will be considered a part-time employee of the town, and will receive only those benefits hereinafter specified for part-time employees.

(C) *Seasonal employee.* Any municipal employee working less than 16 weeks continuously, in a position not deemed to be a permanent or year-round position, will be considered as a temporary employee of the town, and will receive only those benefits hereinafter specified for seasonal employees.

(Ord. 05-14, passed 12-19-2005; Am. Ord. 2007-07, passed 7-2-2007)

EQUAL EMPLOYMENT OPPORTUNITY AND SEXUAL HARASSMENT POLICIES

§ 34.11 EQUAL EMPLOYMENT OPPORTUNITY POLICY.

(A) This section reaffirms the policy and commitment of the town to provide equal employment opportunities for all employees and job applicants. The town endorses and will follow this policy in implementing all employment practices, policies and procedures.

(B) The town will recruit, hire, train and promote persons in all job titles without regard to race, color, religion, national origin, sex, age (except where sex or age is a bona-fide occupational qualification, as defined by law), or physical or mental disability (except where the disability prevents the individual from being able to perform the essential functions of the job and cannot be reasonably accommodated in full compliance with the law).

(1) The town will make employment decisions as to further the principle of equal employment opportunity.

(2) The town will ensure that all personnel decisions and actions, including but not limited to, compensation, benefits, transfers, promotions, layoffs, returns from layoff, terminations, town-sponsored training, education, tuition assistance, and social and recreation programs, will be administered without regard to race, color, religion, sex, age, national origin, or disability.

(C) (1) All employees are expected to comply with the town equal employment opportunity policy.

(2) Managers and supervisors responsible for meeting town objectives are expected to cooperate fully in meeting its equal employment opportunity objectives, and their overall performance will be evaluated accordingly.

(Ord. 2007-07, passed 7-2-2007)

§ 34.12 SEXUAL HARASSMENT POLICY.

(A) The policy against sexual harassment prohibits unwelcome sexual advances, requests for sex (with or without related threats or promises of favors or other benefits), or other verbal or physical sexual conduct that could have a harmful effect on employee performance or create a hostile or offensive work environment. Examples of “sexual harassment” include:

- (1) Obscene or sexually suggestive comments about a person’s body;
- (2) “Off-color” language or “dirty” jokes of a sexual nature;
- (3) Slurs, threats, repeated commands, or other offensive verbal or physical conduct relating to a person’s sex or sexual orientation;
- (4) Offensive or unwelcome sexual flirtations, advances or propositions communicated verbally, by touch, or in writing;
- (5) Use of sexually degrading words to describe a person or a group of people;
- (6) Any display of sexually explicit photographs, drawings, greeting cards, articles, books, magazines or other printed items; and/or
- (7) Repeated unwelcome or unnecessary touching of any part of another’s body.

(B) (1) Sexual and other forms of harassment at work are strictly prohibited, whether committed by employees (management or non-management), vendors, citizens or volunteers.

(2) Under this policy, managers or supervisors cannot threaten or imply that giving in to or rejecting sexual advances will influence any decision regarding employment.

(C) (1) Sexual and other forms of harassment by any employee will result in disciplinary action up to and including dismissal, and may lead to personal legal and financial liability.

(2) He or she is encouraged to report the complaint, if he or she believes he or she has been subjected to any form of harassment at work or during a work-related activity.

(D) (1) Complaints of sexual and other forms of harassment at work will be promptly and carefully investigated.

(2) Under this policy, the manager or supervisor cannot retaliate or try to harm him or her in any way, if he or she chooses to file a harassment complaint.

(E) If he or she has concerns about harassment at work by anyone, including managers, supervisors, co-employees, guests, citizens, volunteers or visitors, he or she should immediately

bring those concerns to his or her manager's attention, or may contact any manager or supervisor with whom he or she feels comfortable discussing the situation.

(F) (1) If possible, he or she should bring his or her concerns to the attention of his or her immediate manager or supervisor.

(2) However, if unwelcome behavior involves a manager or supervisor to whom he or she directly or indirectly reports, he or she can also seek help from any other manager, supervisor or Town Council person.

(G) This investigation may include interviews with all persons having direct knowledge of the unwelcome behavior, including the person who made the complaint, the person accused of sexual or other harassment, and other potential witnesses.

(H) His or her privacy, and the privacy of the person accused of sexual or other harassment, will, to the extent possible, be kept strictly confidential.

(I) (1) At the conclusion of the investigation, the investigator will review the findings with the person(s) who made the complaint.

(2) If the investigation reveals that the complaint is factual, appropriate corrective actions will be taken to prevent the harassment from occurring again, up to and including discharge of any employees believed to be guilty of sexual harassment.

(3) If the investigation is inconclusive or unclear, management will ensure that all parties are reacquainted with the policy prohibiting sexual or other harassment at work.

(Ord. 2007-07, passed 7-2-2007)

HOURS OF WORK AND COMPENSATION

§ 34.21 HOURS OF WORK.

(A) *Work schedules determined by department heads.* The daily and weekly work schedules, and the number of hours per day and per week to be worked to meet work requirements, will be determined by the head of each department.

(B) *Absence.*

(1) An employee shall advise and obtain permission from their supervisor if he or she wishes to leave during or before the end of any regular work period.

(2) It is the employee's responsibility to advise his or her supervisor of the reason for any absence, and a supervisor's responsibility to report such information when submitting the time records to the Clerk-Treasurer.

(3) Employees who know they are to be absent should advise their department head or Town Manager at least 24 hours before using compensatory or personal time for absences.

(4) In the event of illness or other emergencies, they should telephone in this information in order that appropriate adjustments of the work schedule may be made.

(5) Employees who are absent and who do not telephone in to their immediate supervisor within one-half hour after starting time in the employee's department on the morning of their absence will be considered absent without leave.

(6) Three days of consecutive absence without an approved excuse or without advising the town will be considered as a resignation without notice, and the employee will be considered to have voluntarily terminated the employment relationship.

(C) *Street and sewer employee work schedule.*

(1) All Street Department and Sewer Department employees will work the hours of 7:00 a.m. to 3:30 p.m., which includes a half-hour lunch break, and one 15-minute break in the morning and one 15-minute break in the afternoon.

(2) In case of an emergency (i.e., snow removal, storm work, and the like), where the employee comes in early, he or she will work eight hours and then be relieved from duty if work is completed.

(D) *The work day.*

(1) *Breaks.* A break generally not to exceed 15 minutes will be allowed for each employee within each four hours of work.

(2) *Lunch.*

(a) A 30-minute lunch break shall be allowed each municipal employee that works an eight-hour shift, with this break scheduled to fall approximately during the middle of each employee's shift.

(b) If an employee takes lunch time at the Town Hall, he or she is considered "on duty" if called upon.

(3) *Overtime.*

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(a) Any hourly employee who is not exempt from the provisions of the federal Fair Labor Standards Act will be compensated at the rate of 1-1/2 times his or her normal hourly rate of pay for each hour worked in excess of 40 hours per week.

(b) Employees of the Street and Sewage Department when called to come to an emergency situation in the town, occurring at a time other than the employee's normal work hours, will be compensated at the rate of time and one-half the employee's regular rate of pay, and will be paid for a minimum of two hours irrespective of the time actually worked.

(4) *Holiday.*

(a) An employee called out on a holiday will be compensated at the rate of double time the employee's regular rate of pay, and will be paid for a minimum of two hours irrespective of the time actually worked.

(b) A holiday shall be defined as an eight-hour day, and employees of the town shall be compensated for paid holidays on the basis for this definition, with the exception that overtime pay, in addition to holiday pay, will be paid if the employee actually works on the holiday.

(5) *Vacation pay.* Eligible employees shall be compensated for vacation time and pay at the standard work week rate of a 40-hour week.

(6) *Compensatory time.*

(a) When an employee has worked overtime, he or she will be compensated by the payment of the appropriate wage for overtime so worked. Overtime shall be at the rate as is more fully provided above.

(b) Compensatory time may only be earned and used within each quarter by the specific approval of the Town Manager.

(c) Compensatory time for the Town Marshal and Town Manager will be allowed to accumulate for each year.

(d) If compensatory time is not taken by December 31, all accumulated time will be lost.

(e) For all other employees, unused accumulated compensatory time will be paid quarterly each year.

(Ord. 05-14, passed 12-19-2005; Am. Ord. 2007-07, passed 7-2-2007; Am. Ord. 2011-02, passed 1-10-2011; Am. Ord. 2017-04, passed 3-13-2017)

§ 34.22 ATTENDANCE POLICY.

(A) Punctual and regular attendance are essential functions of each employee's job at the town.

- (1) Any tardiness or absence causes problems for fellow employees and supervisors.
- (2) When an employee is absent, his or her work must be performed by others.

(B) Employees are expected to report to work as scheduled, on time and prepared to start work.

(1) Employees are also expected to remain at work for their entire work schedule, except for break periods or when required to leave on authorized town business.

(2) Late arrival, early departure or other absences from scheduled hours are disruptive and must be avoided.

(C) In all cases of absence or tardiness, employees must provide their supervisor with an honest reason or explanation.

- (1) Documentation of the reason may be required.
- (2) Employees also must inform their supervisor of the expected duration of any absence.

(3) Without extenuating circumstances, an employee must call in advance of his or her regular starting time on any day on which the employee is scheduled to work and will not report to work.

(D) Excessive absenteeism (excused or not) may be grounds for discipline, up to and including termination of employment.

(1) Each situation of excessive absenteeism or tardiness will be evaluated on a case-by-case basis.

(2) However, even one unexcused absence may be considered excessive, depending on the circumstances.

(Ord. 2007-07, passed 7-2-2007)

§ 34.23 LEAVES.

Employees of the town shall be allowed the following leave times.

Rome City - Administration*(A) Holidays.*

(1) *Annual holiday schedule.* It shall be the policy of the town to ensure that all full-time employees will be paid at their regular daily rate for those holidays occurring during their usual tenure of employment. Those holidays shall be:

New Year's Day	1 day
Presidents' Day	1 day
Good Friday	1 day
Memorial Day	1 day
Independence Day	1 day
Labor Day	1 day
Veterans' Day	1 day
Thanksgiving Day	2 days
Christmas Day	2 days

(2) When any of these holidays fall on a Sunday, the following Monday will be designated as the holiday. If any of these holidays fall on a Saturday, the preceding Friday shall be observed as the holiday.

(3) Any employee absent without authorization of the immediate supervisor or Town Manager on the workday preceding a holiday and/or on the work day following a holiday will not receive paid holiday compensation for the holiday. An employee must be on work status for 90 days prior to the holiday to be entitled to holiday pay.

(4) Any full-time or part-time employee paid on an hourly basis and required to work or render services on a holiday will be compensated in accordance with the overtime policy stated above.

(B) Vacation.

(1) *Full-time employees.* Full-time employees shall receive the following paid vacation time:

(a) One “week” paid vacation, at the employee’s regular pay rate and regular amount of weekly work hours, after one year of employment.

(b) Two “weeks” paid vacation, at the employee’s regular pay rate and regular amount of weekly work hours, after three years of employment.

(c) Three “weeks” paid vacation, at the employee’s regular pay rate and regular amount of weekly work hours, after ten years of employment.

(d) Four “weeks” paid vacation, at the employee’s regular pay rate and regular amount of weekly work hours, after 15 years of employment.

(2) *Salaried employees.*

(a) One “week” paid vacation, at the employee’s regular pay rate, after one year of employment.

(b) Two “weeks” paid vacation, at the employee’s regular pay rate, after three years of employment.

(c) Three “weeks” paid vacation, at the employee’s regular pay rate, after five years of employment at the employee’s regular pay rate.

(d) Four “weeks” paid vacation, at the employee’s regular pay rate, after ten years of employment.

(3) *Part-time employees.* A part-time employee must work at least 28 hours a week to be entitled to any benefits.

(a) One “week” paid vacation, at the employee’s regular pay rate and regular amount of weekly work hours, after one year of employment.

(b) Two “weeks” vacation, at the employee’s regular pay rate and regular amount of weekly work hours, after three years of employment.

(c) Three “weeks” vacation, at the employee’s regular pay rate and regular amount of weekly work hours, after ten years of employment.

(4) *Scheduling of vacations.*

(a) Scheduling of vacations shall meet with the approval of the employee’s supervisor.

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1. Town Council or Town Manager's approval is required for the department heads and where two employees in the same department are to be on vacation or leave at the same time.

2. All vacation time must be approved by the Town Manager at least five working days prior to the time of vacation.

(b) Vacations will be scheduled from January through December.

1. Vacation time must be used in the calendar year after which it is earned, and may not be carried over beyond the next December 31.

2. Vacation time is non-cumulative.

3. An employee does not earn vacation time each year until his/her anniversary date.

(c) 1. Should an employee voluntarily resign from employment, and provided that a minimum of two weeks' notice is given, the town will pay out any of the employee's unused vacation time.

2. If less than two weeks' notice of resignation is given or an employee is terminated by the town, no unused vacation time will be paid.

(C) *FMLA leave.*

(1) *Reasons for FMLA leave.*

(a) The town complies with all applicable federal and state labor and employment laws, including the Family and Medical Leave Act (FMLA).

(b) The FMLA requires the town to provide up to 12 weeks of unpaid leave during any 12-month period.

(c) An eligible employee may take FMLA leave of up to 12 weeks per leave year for one or more of the following reasons:

1. The birth of a child;

2. The adoption of a child or the placement of a foster child;

3. To care for a sick spouse, child or parent with a serious health condition; or

4. Due to the employee's own serious health condition.

(2) *FMLA leave eligibility.* To be eligible for leave under the FMLA, an employee must have been employed by the town:

(a) For at least 12 months; and

(b) For at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.

(3) *Leave year.* The leave year for the town is defined as the calendar year, January through December.

(4) *Serious health condition.* For the purpose of determining whether an eligible employee or his or her spouse, child or parent has a serious health condition, such a condition includes any injury, illness, or physical or mental condition that requires either in-patient care in a medical facility (i.e., overnight hospitalization) or continuing treatment by a health-care provider on at least two occasions concerning the health condition, and that the condition results in more than three days' absence from regular daily activities, including work or school, or, if not treated, would likely lead to such an absence.

(5) *Intermittent leave.*

(a) If the leave is taken for the birth or placement of a child for adoption or foster care, the leave may not be taken intermittently or on a reduced leave schedule, unless the employee and town agree otherwise.

(b) If the leave is taken to care for a seriously ill spouse, child or parent, or due to employee's own serious health condition, leave may be taken intermittently or on a reduced schedule when medically necessary.

1. The town's agreement is not required if the employee wants to take leave intermittently or on a reduced leave schedule for those reasons.

2. Otherwise such leave is not permitted except at the sole discretion of the town.

(c) 1. Where an employee requests intermittent leave due to a qualified family member's or the employee's own serious health condition, and the leave is foreseeable based on planned medical treatment, the town may require the employee to transfer to a temporary alternate job for which the employee is qualified, and which better accommodates the leave than the employee's regular job.

2. The temporary position will have equivalent pay and benefits of the employee's regular job.

(6) *Job and benefits security.*

(a) With limited exceptions, any eligible employee who takes FMLA leave is entitled to be restored to his or her old job, or to an equivalent position with equivalent pay, benefits and other terms and conditions of employment, unless the employee would no longer have been employed in such a position had the employee not taken such a leave.

(b) For the duration of the FMLA leave, the town will maintain coverage under any group health plan for any employee, at the same level and under the same conditions coverage that would have been provided if no leave had been taken.

1. During an unpaid FMLA leave, the town may require employees to pay their share of premium payments at the same time as normal payroll deductions.

2. The town shall notify eligible employees concerning the amount of each premium payment.

3. Failure to pay such premiums during leave may result in the loss of health coverage.

4. The Town may stop coverage if the employee's payment is more than 30 days late; provided the town gives 15 days' notice, with an opportunity to make up the missed payments.

(7) *Employee obligations and limitations under FMLA.* In the administration of family or medical leave, each employee has certain obligations and limitations, including but not limited to the following:

(a) Where a husband and wife are employed by the town, the aggregate amount of leave that the town will give the spouses during any 12-month period is limited to 12 work weeks, if the leave is for a birth or the placement of a child, or to care for a sick child or parent.

(b) In case of the birth or placement of a child for adoption or foster care, the entitlement to leave expires after one year from the date of the birth or placement.

(8) *Compensation for FMLA leave.*

(a) FMLA does not require paid family or medical leave.

1. The employee may choose that any of the employee's available accrued paid vacation, personal, sick leave be substituted for any part of the 12-weeks of unpaid FMLA leave, but only under circumstances permitted by the town's leave policies.

2. Once any paid leave is used up, the remainder of the 12 weeks of leave will be unpaid.

(b) 1. Within a reasonable time after the employee requests a FMLA leave, or when the town learns that leave has been or will be taken for an FMLA-qualified purpose, the town may designate that the employee's available accrued paid vacation, personal and sick leave be substituted for any part of the 12-weeks of unpaid FMLA leave.

2. Once any paid leave is used up, the remainder of the 12 weeks of leave will be unpaid.

(c) During the leave period, the employee is not entitled to unemployment compensation.

(9) *Employee notice requirements.*

(a) Where the necessity for leave is foreseeable due to the expected birth or placement of a child, the employee must provide at least 30 days' written notice of his or her intention to take leave.

1. If the date of birth or placement requires leave to begin in less than 30 days, the employee must provide such written notice as soon as practicable.

2. If an employee is unable to give such notice because the need for leave is not foreseeable, then the employee must give as much notice as practicable. Typically, this means giving notice to the town within one or two working days of learning that FMLA leave must be taken.

(b) Any employee who fails to give requisite notice may be delayed in receiving authorization for leave.

(c) If an employee fails to provide the required 30 days' written notice for foreseeable leave, is aware of the FMLA notice requirements, and has no reasonable excuse, the employee may be delayed in receiving authorization for leave.

(10) *Healthcare provider certification.*

(a) The town may require that any leave request based on a qualified family member's or the employee's own serious health condition be supported by certification of a healthcare provider in a timely manner.

1. The employee shall have at least 15 calendar days from the time leave is requested to provide such certification.

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2. The town may request, and the employee has an obligation to provide, later re-certifications on a reasonable basis, but not more often than every 30 days.

(b) Each employee shall report monthly on his or her status and intention to return to work.

(c) The town requires each employee taking leave due to his or her serious health condition to obtain certification that he or she is not able to resume work.

(D) *Sick leave.*

(1) Full-time employees, salaried employees, and part-time employees with full-time benefits will receive paid sick leave for illness or injury, or may take paid personal leave days as set forth herein.

(a) Employees within the 90-day probationary period are not entitled to receive paid sick leave and sick leave will not be accumulated within the probationary period.

(b) Each full-time employee, salaried employee, and part-time employee with full-time benefits shall receive six days of sick leave per year.

(c) Sick leave accrues at one-half day per month and is non-cumulative.

(2) Sick leave is to be utilized solely for the purpose of:

(a). Illness or injury of the employee;

(b) Avoiding jeopardizing the health of other municipal workers;

(c) Attending medical or dental appointments.

(3) In order to qualify for sick leave pay, the employee must comply with the following conditions.

(a) Employees shall notify the Town Manager or Clerk-Treasurer of their absence prior to the start of the work shift.

(b) Employees shall keep the Town Manager or Clerk-Treasurer informed of the extent of their illness and anticipated day of return.

(c) Doctor's certification of any illness of three consecutive days shall be required.

(4) The employee shall notify his supervisor of his absence due to illness before the scheduled work start time, except in medical emergency. Any employee who does not notify his supervisor because of an emergency will have an unexcused absence, unless he presents an acceptable physician's statement to the supervisor within three days of his return to work.

(5) An employee who is on sick leave for three consecutive working days shall present his attending physician's statement to his supervisor on the day after the third working day of his absence, and on the day after any physician's visit relating to the same illness or injury.

(6) All attending physicians' statements shall include the date when the employee may resume normal work duties.

(a) Any incomplete statement may be rejected by the town as insufficient and an unexcused absence(s) will be charged against the employee.

(b) Sick leave shall be determined in light of the physician's statement and other medical evidence available or requested by the town.

(7) No sick leave or sick leave pay allowance shall be granted for absences caused by the use of non-prescribed habit-forming drugs or intoxicants, willful intent to injure oneself, or the commission of a felony.

(8) Any employee unable to complete his or her workday because of a work-related injury will be paid for the balance of his or her regular work day. Any additional rights and benefits for such an employee shall be governed by the Indiana workmen's compensation statute and this chapter.

(9) The employee may be required to undergo a physical examination by a physician, selected by the town at the town's expense, in relation to a requested sick leave.

(a) The town may place the employee on an unpaid sick leave of absence not to exceed six months, in the event the medical evidence indicates the employee is unable to perform his or her duties.

(b) Any employee who does not return to work for the performance of his or her duties within the six-month period may be released from employment with the town.

(10) Full-time employees, salaried employees, and part-time employees with full-time benefits, off work due to injury or illness not subject to workmen's compensation benefits, may apply to the Town Council for payment of salary benefits during such time as they are off work for a period not to exceed 90 days.

(a) These benefits may be granted on a case-by-case basis by the Town Council, based on an application presented to the Town Council by the employee, containing the employee's name,

length of employment, statement of the cause of injury or illness, length of time expected to be off work, and a doctor's statement, including diagnosis, length of disability and prognosis.

(b) Any employee applying for these benefits shall have first used upon all of his or her available vacation and/or sick leave days heretofore allowed under this chapter.

(E) *Jury duty leave.*

(1) Each employee shall be granted leave for jury duty.

(2) The jury duty leave shall be paid in an amount equal to the difference between the employee's base rate and the jury duty fee paid by the court.

(3) The employee shall provide notice to his or her supervisor of the need for leave for jury duty, upon receipt of the jury call from the calling court.

(4) An employee will only be compensated by the town for a period of one week.

(5) If the trial extends longer than one week, the employee will have to request consideration from the Town Council for any further pay.

(F) *Personal leave.*

(1) Full-time employees, salaried employees, and part-time employees with full-time benefits shall receive four personal days a year, with pay, at their regular rate of compensation, provided the employee receives prior approval from the Town Manager.

(2) Personal leave accrues at one-half day every two months and are non-cumulative.

(3) Employees within the 90-day probationary period are not entitled to receive paid personal leave and personal leave will not be accumulated within the probationary period.

(G) *Bereavement leave.*

(1) All employees shall receive up to three consecutive working days of paid leave from work, at the regular rate of pay, upon the death of a spouse, brother, sister, child, stepchild, mother, father, stepfather or stepmother.

(2) One day of paid leave is allowed for the death of a grandparent, mother-in-law, father-in-law, niece, nephew, brother-in-law, sister-in-law or grandchild.

(Ord. 05-14, passed 12-19-2005; Am. Ord. 2007-07, passed 7-2-2007; Am. Ord. 2008-07, passed 12-22-2008; Am. Ord. 2014-08, passed 12-23-2014)

MISCELLANEOUS POLICIES

§ 34.31 DEPARTMENT POLICIES.

(A) It is the policy of the town to permit its departments to establish additional policies and work rules as needed within the respective departments.

(B) Departmental policies and work rules may be established by the department head as the need indicates.

(1) Such rules must be filed with the Town Manager to determine instances of conflicting rules.

(2) In case of conflict, general town policy takes precedence, subject to contrary provisions of law.

(Ord. 2007-07, passed 7-2-2007)

§ 34.32 EDUCATIONAL AND TRAINING EXPENSE POLICY.

(A) The town will reimburse employees for job-related educational and training expenses, if the employee obtains the prior approval of the Town Council, and receives a passing grade or obtains the competency level sought.

(B) The employee may also be reimbursed mileage and other personal expenses associated with job-related education or training, in accordance with the town's regular reimbursement policies.

(C) The employee must request reimbursement for the educational/training expense within 30 days of incurring the expense.

(Ord. 2007-07, passed 7-2-2007)

§ 34.33 TRAVEL, MEAL AND LODGING EXPENSE POLICY.

The Clerk-Treasurer, Town Council members, and employees of the town will receive reimbursement for mileage, meals, lodging, road tolls, parking and similar expenses for out-of-town travel, while employed by the town and while engaged in conducting business for the town by consent.

(A) An employee of the town who shall drive or operate a personal automobile for the town under these conditions, when a town-owned vehicle is not available, shall receive mileage set by the

Indiana Department of Revenue for each mile the employee drives. The employee shall, at all times, travel the shortest route between destinations.

(B) In addition to mileage, the maximum reimbursement for travel expenditures shall be as follows:

- (1) Meal expenses: \$50 maximum per day.
- (2) Lodging expenses: \$150.00 per night maximum per room.

(C) Notwithstanding the above per diem maximums, and except upon pre-approval by the Town Council, each employee shall utilize meals and lodging included in or a part of any registration process for out-of-town events.

(D) A receipt for any expense is required before reimbursement will be considered, except for mileage.

(E) Any expense that exceeds the maximum must be pre-approved by the Town Council in order to be reimbursed in full.

(Ord. 05-14, passed 12-19-2005; Am. Ord. 2007-07, passed 7-2-2007)

§ 34.34 ETHICAL STANDARDS OF EMPLOYEES.

(A) The following criminal statutory provisions regarding ethical standards for government officers and employees exist and shall be strictly adhered to the town employees:

- (1) Bribery.
- (2) Official misconduct.
- (3) Conflict of interest.
- (4) Profiteering from public service.

(B) It is important that town employees maintain high ethical standards to promote the principal that public office is a public trust, where government is based upon the consent of its citizens who are entitled to have complete confidence in the integrity of their government.

(1) The business of the town shall be conducted in such a manner so that the general public will have confidence that the conduct of the town's business is always conducive to the public good.

(2) As such, specific reference and attention shall be given to the Indiana Code of Ethics for the Conduct of State Business contained in 40 IAC-2 as a guide to town employees.

(a) The reference is intended as a guide only and is not meant to unduly restrict or limit the behavior of town employees during the time when they are not on duty.

(b) As a private citizen, each town employee retains lawful right and privileges to interests of a personal or private financial nature, and these rights and privileges will be honored to the extent that they are compatible with an individual's public office or employment.

(Ord. 2007-07, passed 7-2-2007)

§ 34.35 SAFETY POLICY.

(A) Safety is everybody's business.

(1) Every employee is responsible for his or her own safety as well as for others in the workplace.

(2) Safety must be a primary concern in every aspect of planning and performing all town activities.

(3) The town wants to protect its employees against preventable injury or illness in the workplace to the greatest extent possible.

(B) All injuries, no matter how slight, and any apparent health or safety hazards must be reported to the employee's supervisor or the Town Manager.

(Ord. 2007-07, passed 7-2-2007)

§ 34.36 EMPLOYEE CONDUCT AND DISCIPLINE.

Engaging in the following conduct and activities, which are not mutually exclusive or collectively exhaustive, shall be cause for disciplinary action, up to and including immediate discharge:

(A) Insubordination;

(B) Fighting, indecent conduct, or use of abusive/profane language in public while at work;

(C) Violation of the town's drug free workplace or drug abuse in the workplace policies;

(D) Refusal to perform legitimate work assigned;

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(E) Abuse, misuse, destruction or theft of town property, tools or equipment;

(F) Conviction of any crime resulting in confinement;

(G) Habitual absenteeism, unexcused absences, or tardiness;

(H) Operation of machines, tools or equipment to which an employee has not been specifically assigned by an accredited supervisor or his or her assistant;

(I) Interference with town operations;

(J) Leaving the department or job during working hours without the permission of the immediate supervisor, except when engaged in regular work or in cases of emergency;

(K) Misuse or removal from the work premises, without proper authorization, of any town property or records;

(L) Creating unsanitary conditions or hazards;

(M) Engaging in horseplay or practical jokes that may lead to the harm of persons or property;

(N) Failure to give normal conscientious effort to the performance of a legitimate work assignment;

(O) Consistent low productivity;

(P) Smoking in unauthorized areas;

(Q) Possession of firearms, explosives, poisonous substances, or weapons of any kind while on duty, except in the performance of official duties;

(R) Molesting or otherwise annoying other workers;

(S) Intentional or knowing falsifications or tampering with, removing or misusing any town public record, document, report, application, or copy thereof;

(T) Violation of any town rules or policies established in the manual or in a separate departmental policy.

(Ord. 2007-07, passed 7-2-2007)

§ 34.37 HIRING AND DISMISSAL.

The Town Council expressly reserves the right to hire all town employees, unless designated to the Town Manager.

(1991 Code, § 34.06) (Ord. 89-01, passed 2-6-1989; Am. Ord. 2007-07, passed 7-2-2007)

§ 34.38 DISCIPLINARY PROCEDURES.

(A) Town employees, other than Town Marshals or police officers, who are subject to the disciplinary procedures found in §§ 34.71 *et seq.*, are subject to disciplinary action for violation of these rules and regulations, policies established by the Town Council, or for other good cause as reasonably determined by the Town Council.

(1) It is recognized that, in many instances, minor matters should and will be discussed and resolved without need for formal disciplinary action.

(2) Such undocumented situations are not considered “discipline” for purposes of these rules and regulations.

(B) Disciplinary action will be appropriate to the circumstances as reasonably determined by the town and may include, but need not be limited to, the following.

(1) *Department head’s reprimand.*

(a) An oral warning may be given by the department head, and when given may, at the discretion of the department head, be documented for placement in the employee’s personnel file, with a copy given to the employee.

(b) Such reprimand may be considered by the Town Council with regard to further disciplinary action, future compensation and/or job responsibilities, and for all other appropriate purposes.

(2) *Town Manager’s reprimand.*

(a) A written reprimand may be given by the Town Manager, tendered to the employee for signature, and placed in the employee’s personnel file, with a copy to the employee.

(b) If the employee refuses to sign, the document will so indicate.

(3) *Meeting with Town Council and Town Manager.* If the issue remains unresolved, a meeting may be held with the Town Council, Town Manager and the employee.

(4) *Suspension.*

(a) The department head may suspend an employee for the balance of the work day in which the incident justifying the suspension occurred, as well as for a period of time not to exceed the immediately following three work days.

(b) Any such suspension shall be without pay, and may be a part of the department head's and/or Town Manager's disciplinary action, including a documented department head's and/or Town Manager's reprimand as above defined.

(c) Any employee may be suspended for up to ten days without pay for cause, as reasonably determined by the Town Council.

(5) *Discharge.* An employee may be discharged by the Town Council or Town Manager for any reason, or for no reason, to the full extent provided by applicable law.

(C) Decisions as to disciplinary action beyond those within the authority of the department heads as hereinabove set out, including discipline of the department heads, shall be made by the Town Council.

(D) Disciplinary measures other than discharge that become part of the employee's personnel file will not be maintained as a part of that record beyond 60 months from the date of disciplinary action, providing there is no additional disciplinary action given to the employee during that 60-month period.

(Ord. 2007-07, passed 7-2-2007)

§ 34.39 SUGGESTIONS AND COMPLAINTS.

(A) A clear and open channel for the expression of employee suggestions and complaints is a fundamental principle of sound employee relations.

(1) Therefore, each employee should be encouraged to talk with his or her supervisor about any problem, complaint or suggestion that might arise concerning the employee's work.

(2) All suggestions or complaints by an employee shall be in writing, and are to be submitted to the supervisor for appropriate action.

(3) If the supervisor feels the suggestion or complaint should be handled by the Town Council, the written document shall be submitted to Town Council and the matter discussed thoroughly.

(4) If the employee believes that his or her suggestions or complaints are not being properly handled by the supervisor, or if the suggestion or complaint directly involves the supervisor, the employee may make the suggestion or complaint directly to the Town Council for consideration.

(B) Any decisions made by the Town Council shall be discussed with the employee and shall be final.

(Ord. 2007-07, passed 7-2-2007)

§ 34.40 PROBATIONARY PERIOD.

(A) All employees, except for Town Marshals who are subject to the probationary period outlined in § 34.72, shall be on a 90-day probationary period.

(1) At this time, they shall be reviewed for permanent employment.

(2) If the review is not a satisfactory one, the Town Council or Town Manager may request that the employee remain on probationary time for a length of time as designated in the review.

(B) This section does not apply to seasonal employees.

(1991 Code, § 34.03) (Ord. 89-01, passed 2-6-1989; Am. Ord. 05-14, passed 12-19-2005; Am. Ord. 2007-07, passed 7-2-2007)

§ 34.41 ADDITIONAL BENEFITS.

(A) “*PERF*”.

(1) All new employees shall pay their own “*PERF*” for one full year of employment.

(2) The employee’s first annual raise will be town-paid “*PERF*”.

(B) *Volunteer Fire Fighters for Orange Township Fire Department.*

(1) Any employee of the Orange Township Fire Department called to a rescue or fire while on duty will be compensated his or her work wage.

(2) The town will not compensate an employee called out before or after work hours.

(3) The town will not compensate an employee if the Orange Township Fire Department is on standby for another fire department.

(C) *Clothing allowance.*

(1) Street Department employees and Sewer Department employees will have a clothing allowance of \$300 per employee per year.

(2) The town will pay for the rental of uniforms.

(D) *Insurance coverage.*

(1) All full-time permanent employees are eligible for health and hospitalization insurance coverage, dental and vision insurance coverage, deferred compensation, and long-term disability insurance.

(2) Employee dependents may be added to the health and hospitalization, dental and vision insurance, provided the employee signs the necessary forms and authorizes deduction of the premium from his or her paycheck.

(3) An employee must be employed for 90 days before becoming eligible for coverage on health, hospitalization, dental and vision insurance.

(4) All insurance coverage will be terminated at midnight on the last day of work.

(E) *Workmen's compensation.* All employees are covered by workmen's compensation while on the job.

(Ord. 05-14, passed 12-19-2005; Am. Ord. 2007-07, passed 7-2-2007)

§ 34.42 USE OF TOWN PROPERTY.

No employee may use a vehicle owned or maintained by the town outside of the town, except during the performance of official duties or with the express authorization of a member of the Town Council.

(Ord. 2007-07, passed 7-2-2007)

§ 34.43 CONFLICT OF INTEREST AND SUPPLEMENTARY NEPOTISM POLICIES.

(A) The Town of Rome City finds that it is necessary and desirous to supplement its policy of conduct with regard to nepotism in the employment with the town and in contracting with the town in order to continue to be able to provide local government services to its residents and to comply with the new laws effective July 1, 2012 known as I.C. 36-1-20.2 and I.C. 36-1-21, respectively.

(B) On July 1, 2012, the town shall have a Nepotism and a Contracting with a Unit policy that complies with the minimum requirements of I.C. 36-1-20.2 (hereinafter “Nepotism Policy”) and I.C. 36-1-21 (hereinafter “Contracting with a Unit by a Relative Policy”) and implementation will begin.

(C) The town’s Nepotism Policy is hereby established effective July 1, 2012 by adopting the minimum requirements provisions of I.C. 36-1-20.2, and including all future supplements and amendments thereto which become law from time to time, and making them a part hereof as if fully set out herein, with the further stipulation that no employee of the town shall be a member of the immediate family or reside in the household with any elected official of the town. In addition, a copy of I.C. 36-1-20.2 Nepotism in effect on July 1 is attached to the ordinance codified herein.

(D) The town’s Contracting with a Unit by a Relative Policy is hereby established effective July 1, 2012 by adopting the minimum requirements provisions of I.C. 36-1-21, and including all future supplements and amendments thereto which become law from time to time, and making them a part hereof as if fully set out herein. In addition, a copy of the I.C. 36-1-21 Nepotism in effect on July 1 is attached to the ordinance codified herein.

(E) The town finds that both I.C. 36-1-20.2 and I.C. 36-1-21 specifically allow a unit to adopt requirements that are “more stringent or detailed” and that more detailed are necessary.

(F) The town further finds that a single member of the legislative body cannot act for the body to make work assignments, compensation, grievances, advancement or a performance evaluation without prior authority of a majority of the body and therefore, without such authority by the majority, he or she will not be in the direct line of supervision.

(G) The town finds that a single member of governing bodies with authority over employees in the town cannot act for the governing body to make work assignments, compensation, grievances, advancement or a performance evaluation, without prior authority of a majority of the body, when a statute provides that a majority is needed to act, and therefore, without such authority by the majority, the single member will not be in the direct line of supervision.

(H) All elected and appointed officials and employees of the town are hereby directed to cooperate fully in the implementation of the policies created by this section and demonstrating compliance with these same policies.

(I) Failure to abide by or cooperate with the implementation, compliance and certifications connected with the Nepotism Policy is a violation and may result in the discipline, including termination, of an employee or a transfer from the direct line of supervision or other curative action. An elected or appointed official of the town who fails to abide by or cooperate with the implementation, with the compliance and with mandated certifications of the Nepotism Policy may be subject to action allowed by law.

(J) Failure to abide by or cooperate with the implementation, compliance and certifications connected with the Contracting with Unit by a Relative Policy is a violation and may result in the

discipline, including termination, of an employee or a curative action. An elected or appointed official of the town who fails to abide by or cooperate with the implementation, with the compliance and with mandated certifications of either the Nepotism Policy or the Contracting with Unit by a Relative Policy may be subject to action allowed by law.

(Ord. 2012-04, passed 6-11-2012)

DRUG AND ALCOHOL TESTING

§ 34.51 POLICY.

(A) The town is committed to providing a safe environment for the well-being of all of its employees; to maintain a safe, healthful and productive work environment; and to ensure the safe and efficient delivery of services to its citizens.

(B) (1) The town agrees that the manufacture, distribution, dispensation, possession, sale or use of illegal drugs or alcohol by employees while on duty is prohibited.

(2) Employees are prohibited from being at work or acting in the scope of their employment with the town while impaired by alcohol or with illegal or illicit substances present in their systems or on their persons.

(C) The town agrees that employees involved in the use, consumption, possession, sale, distribution, or transfer of any drugs or alcoholic beverages during working hours, or while on the town's property, or while driving town-owned property, or while carrying weapons, are in violation of this policy.

(D) For purposes of this policy, the term **DRUGS** includes any and all controlled substances as defined by law, including but are not limited to, marijuana, cocaine, hallucinogens, amphetamines, barbiturates, PCP, depressants, opiates, methadone, methaqualone, benzodiazepines, as well as "designer" drugs and synthesized substances with similar effects. The term **DRUGS** also includes prescription and over-the-counter medications that have not been legally obtained, are not being used for prescribed purposes, and/or are not being taken according to prescribed dosages.

(E) The employee will be tested for the following drugs: marijuana, cocaine, amphetamines, opiates (including heroin), and phencyclidine (PCP). The rules prohibit any unauthorized use of these controlled substances.

(F) With respect to alcohol, a CDL holder who has a blood alcohol count of 0.02 or greater when tested, just before, during, or just after performing safety-sensitive duties, must be removed from performing the duties for 24 hours.

(1) A violation of these testing rules does not affect the driver's commercial driving license record.

(2) All driver alcohol testing results will remain confidential.
(Res. 96.01, passed 3-11-1996; Am. Ord. 2007-07, passed 7-2-2007)

§ 34.52 TESTING CIRCUMSTANCES.

The town may request a CDL holder to submit a breath, urine, and/or blood specimen for alcohol and/or drug testing under the following circumstances.

(A) *On-the-job accident.*

(1) Any employee who is personally involved during working hours in an on-the-job accident where the accident involves a commercial motor vehicle, in which there is either a fatality,

an injury treated away from the scene, or a vehicle is required to be towed from the scene, will be transported to Parkview Noble Hospital or a physician for treatment.

(2) The employee will be required to submit to a saliva, urine, breath, and/or blood test, or other equivalent testing, to determine if drugs or alcohol are present in the employee's system.

(3) Samples given by employees shall be tested only by hospitals, medical clinics, or laboratories that meet the National Institute on Drug Abuse (NIDA) certification requirements.

(B) *On-the-job injury.*

(1) Any employee causing or inflicting an injury requiring professional medical attention to another individual during working hours will have to submit to a saliva, urine, breath, and/or blood test, or other equivalent testing, to determine if drugs or alcohol are present in the employee's system.

(2) Samples given by employees shall be tested only by hospitals (Parkview Noble), medical clinics, or laboratories that meet the NIDA certification requirements.

(C) *On-the-job behavior.*

(1) The town can require any employee showing abnormal behavior, when a supervisor has reasonable suspicion to believe the employee is under the influence of drugs and/or alcohol that affects or changes the employee's work performance or behavior on the job, to go to a hospital, medical clinic or laboratory that meets the NIDA certification requirements, to provide saliva, urine, breath, and/or blood specimens for laboratory testing.

(a) The supervisor must be trained in signs of drug and alcohol intoxication endorsed by the town.

(b) **REASONABLE SUSPICION** is defined as a pattern of abnormal, uncharacteristic, and/or erratic behavior differing from the normal displayed or accepted behavior.

(c) Physical symptoms of drug and/or alcohol abuse include, but are not limited to, impaired appearance, behavior, speech, motor coordination, slow or poor reflex responses, breath odor of the employee, violent or threatening behavior, unusual absenteeism or tardiness.

(d) The behavior must be based on specific personal observation of the employee by a supervisor or fellow employee.

(2) The observer must fill out a reasonable suspicion observation form within 24 hours of the incident.

(D) *Pre-employment drug/alcohol testing.*

(1) Prior to employment, the selected applicant will be required to submit a urine and/or blood test, checking for the presence of drugs or alcohol.

(2) They will also be asked to sign a release authorizing former employers to forward prior records.

(E) *Random drug testing.*

(1) USIS will conduct tests on a random basis for CDL holders

(2) The testing site will be the Occupational Health Building Division of Parkview Noble.

(3) Upon notification, the employee selected must proceed immediately to the testing site.

(4) The alcohol testing shall only be given just prior to, or immediately following, the performance of a safety-sensitive duty while working.

(F) *Return to duty and follow-up.*

(1) This shall be conducted when an employee has violated the alcohol and drug regulations.

(2) The employee must test negative before returning to work, and submit to follow-up testing in accordance with Department of Transportation regulations, and follow all recommendations of the substance abuse professional.

(Res. 96.01, passed 3-11-1996; Am. Ord. 2007-07, passed 7-2-2007)

§ 34.53 TESTING PROCEDURES FOR ALCOHOL.

(A) Evidential breath testing (EBT) devices will be used when testing employees.

(B) Two breath tests are required to determine if a person has a prohibited alcohol concentration.

(1) First, a screening test is conducted; any result less than 0.02 alcohol concentration, as reported by an EBT device, is considered a “negative” test.

(2) A second confirmation test is conducted if the alcohol concentration is 0.02 or greater.

(C) The driver and the technician complete the alcohol testing form to ensure that the results are properly recorded.

(D) The confirmation test, if required, must be conducted using an EBT device that, to ensure their reliability, prints out the results, date and time, a sequential test number, and the name and serial number of the EBT device.

(Res. 96.01, passed 3-11-1996; Am. Ord. 2007-07, passed 7-2-2007)

§ 34.54 TESTING PROCEDURES FOR CONTROLLED SUBSTANCES.

(A) *Before testing.*

(1) Before providing samples, the employee shall have the entire procedure explained by the person responsible for receiving, preparing and shipping the specimen.

(2) The explanation shall include the conditions under which the specimen is to be produced, chain of possession procedures, and the manner in which the test results will be reported.

(3) If requested, the employee will sign a consent form authorizing the hospital, medical clinic, or laboratory to receive saliva, urine, breath, and/or blood specimens from the employee, and to release the results of the laboratory testing to the town.

(4) However, the employee shall not be required to waive any claim of action under the law.

(B) *Testing.*

(1) The driver will be asked to show the collector a photo ID (driver's license).

(2) The driver will be asked to provide a urine specimen in the privacy of a restroom.

(3) The urine shall be obtained directly in the two tamper-resistant urine bottles contained in the specimen collection kit; or the urine specimen may be collected in a wide-mouth "clinic" specimen container, which shall remain in full view of the employee until the urine is transferred to, sealed and initialed in the two tamper-resistant bottles in the kit.

(a) The bottles shall be labeled "primary" and "split".

(b) Both bottles shall be sent to the laboratory, but only the primary specimen is used for testing.

(c) The split specimen is stored at the laboratory in case the driver requests that it be tested at another certified laboratory, providing the driver with an opportunity for a “second opinion”.

(4) In the presence of the driver, the collector will seal the corresponding bottle of urine with a seal provided on the testing form.

(a) Each seal has the control number/specimen number that corresponds to the number on the rest of the form.

(b) Each form contains the required chain-of-custody as mandated by the federal government.

(c) The driver will be asked to sign the form, stating that he or she saw the collector seal his or her bottles in his or her presence.

(5) The specimens will then be placed in a secure bag, which will only be opened once the specimens have reached the laboratory for testing.

(6) When a urine test kit is received by a laboratory, one sealed urine specimen bottle shall be removed immediately for testing.

(a) The shipping container with the remaining sealed bottle shall be immediately placed in secure refrigerated storage.

(b) If the first urine test is reported as positive, the employee may, within 24 hours of being notified of the positive (one or more controlled substance(s) being tested is/are present) report, request that the second urine specimen be forwarded to a different laboratory of the employee’s choice for GC/MS testing.

(c) This laboratory shall be agreed upon in advance by the town and must be certified by the U.S. Department of Health and Human Services.

(7) The laboratory reports the results to the MRO (medical review officer).

(a) If the test is negative, a negative (none of the controlled substances being tested are present) report is issued to the driver’s employer.

(b) If the test is positive, the MRO will contact that driver and inquire about the substances that tested positive.

(c) If the driver can provide a sufficient (legal) explanation of the substance use, then a negative report will be issued to the driver’s employer.

(Res. 96.01, passed 3-11-1996; Am. Ord. 2007-07, passed 7-2-2007)

§ 34.55 FAILURE TO COOPERATE.

(A) An employee's refusal to submit to the tests for drugs or alcohol will be considered a refusal of a direct work order and failure to cooperate in investigation, and subject the employee to discharge pursuant to I.C. 36-8-3-4.

(B) Similarly, an employee's refusal to abide by any of the requirements of this subchapter after testing positive, including but not limited to, cooperating in follow-up testing, consent, signing and any other term of this subchapter, will be considered failure to cooperate and may subject the employee to disciplinary action and/or termination.

(Res. 96.01, passed 3-11-1996; Am. Ord. 2007-07, passed 7-2-2007)

§ 34.56 REHABILITATION.

(A) Any employee may voluntarily submit to a drug or alcohol rehabilitation program, and the town will encourage any employee with an alcohol or drug dependence problem to seek professional assistance before the problem leads to an incident requiring disciplinary action.

(B) However, the town will not be held financially responsible for any of the rehabilitation costs. The costs will be borne solely by the employee.

(Res. 96.01, passed 3-11-1996; Am. Ord. 2007-07, passed 7-2-2007)

EXPOSURE CONTROL/BLOODBORNE PATHOGENS PLAN**§ 34.61 PURPOSE.**

(A) The purpose of this exposure control plan is to:

(1) Eliminate or minimize an officer/employee's occupational exposure to blood or other body fluids;

(2) Identify officers/employees who are occupationally exposed to blood or other potentially infectious materials while performing their regular job duties;

(3) Provide information and training to officers/employees who may be exposed to blood and other potentially infectious materials; and

(4) Comply with OSHA Bloodborne Pathogens Standard, 29 C.F.R. 1910.1030.

(B) A copy of this plan is available to all officers/employees during their shifts at the Town Hall.

(Res. 2003-05, passed 12-8-2003; Am. Ord. 2007-07, passed 7-2-2007)

§ 34.62 EXPOSURE DETERMINATION.

(A) The Town Manager has performed an exposure determination for all common job classifications that may be expected to incur occupational exposures to blood or other potentially infectious materials.

(1) This exposure determination is made without regard to the use of personal protective equipment.

(2) The following is a list of those job classifications in this category: Town Marshal, Deputy Marshal, Deputy Marshal (part-time), Reserve Marshal (volunteer), and utility maintenance workers.

(B) The following is a list of job classifications in which some officers/employees may have occupational exposures. Not all of these officers/employees are expected to incur exposure to blood or other potentially infectious materials. The affected job classifications, tasks and procedures are listed below.

(1) Town Marshal's Department: work around blood and infectious materials.

(2) Utility Department: work with some material that may be infectious.

(Res. 2003-05, passed 12-8-2003; Am. Ord. 2007-07, passed 7-2-2007)

§ 34.63 COMPLIANCE METHODS.

(A) *Universal precautions.*

(1) Universal precautions recognize all body fluids as though they are infected with bloodborne pathogens.

(2) This method of infection control requires the agency/department and officer to assume that all human blood and specified human body fluids are infectious for HIV, HBV and other bloodborne pathogens.

(3) Where differentiation of types of body fluids is difficult or impossible, all body fluids are to be considered as potentially infectious.

(B) *Engineering controls and work practices.* Preventative action will be taken before, during and after risky situations. Engineering and work practices controls will be used by all officers/employees to eliminate or minimize occupational exposure in their agencies/departments.

(1) *Engineering controls.*

(a) Contaminated disposable sharps will be disposed of by medical authorities or EMS.

(b) Contaminated clothing and gloves will be disposed of or cleaned through the direction of the Police Department.

(2) *Work practices.*

(a) Pat-downs must be conducted by the Police Department.

(b) Vehicle seat searches must be conducted by the Police Department.

(c) Hands must be washed with soap and water after exposure to contaminated areas.

(C) *Personal protective equipment (PPE).*

(1) The following PPE will be provided at no cost to officers/employees.

(a) *Body protection.*

1. A protective gown will be worn when the officer/employee thinks he or she will or may be splashed.

2. Gloves will be worn when coming in contact with any infectious material.

3. Masks will be worn in all contaminated areas.

(b) *Gloves and masks.*

1. Rubber safety gloves to be worn at all times, e.g., searches, accidents and contaminated areas.

2. Safety masks to be worn when working in contaminated areas.

(c) *Eye protection.* Eye shield to be worn when subject thinks he or she will be splashed.

(d) *Special PPE.* Shoe covers will be used in situations when infectious material can or will be splashed.

(2) (a) The Police Department is assigned the responsibility to distribute the appropriate, accessible PPE, without cost, to officers/employees.

(b) All PPE will be removed prior to leaving the scene of the investigation.

(c) All PPE will be cleaned, laundered, and/or disposed of by the appropriate agencies at no cost to the employee.

(d) When removed, PPE will be placed in a biohazard bag for storage, washing and decontamination.

(e) PPE will then be released to the appropriate agencies for proper disposal.

(D) *Housekeeping.* This facility will be cleaned and decontaminated according to the following schedule:

<i>Area</i>	<i>Frequency</i>	<i>Cleaning Agent</i>
Town Hall area	On demand	Appropriate germicide
Garage area	On demand	1:100 solution of bleach
Wastewater Lab/Garage	On demand	1:100 solution of bleach

(E) *Contaminated laundry and equipment.*

(1) Contaminated laundry will be cleaned at Price’s Laundry, Inc., in LaGrange, Indiana, (260) 463-4189.

(2) When necessary, contaminated equipment will be cleaned by Parkview Noble.

(3) Otherwise, officers/employees will be responsible for their equipment.

(F) *Regulated waste.* For regulated waste, the following procedure will be followed: contaminated waste will be taken to Parkview Noble by EMS personnel.

(G) *Hepatitis B vaccination and post-exposure follow up.*

(1) *Hepatitis B vaccination.*

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(a) The town will offer, at no cost, the Hepatitis B vaccine and vaccination series, and the post-exposure follow-up to those officers/employees who have had an exposure incident within ten working days of receiving the initial job assignment.

(b) (1) The Town Marshal is the person in charge of the Hepatitis B vaccination program for the Police Department.

(2) The Town Marshal will ensure that all medical evaluation(s) and procedures, including the Hepatitis B vaccine and vaccination series and post-exposure follow-up, including prophylaxis, are made available at no charge to each officer at a reasonable place and time, and performed or supervised by a licensed healthcare professional according to the recommendations of the CDC.

(c) The Town Manager is responsible for the rest of the town employees.

(d) All appropriate personnel have received training in bloodborne pathogens and procedures.

(2) *Post-exposure evaluation and follow-up.*

(a) When an officer/employee has an exposure incident, it will be reported to the Town Marshal, the Noble County Health Department, and the Noble County Health Nurse.

(b) Following a reported exposure incident, the exposed officer/employee will immediately receive a confidential medical evaluation, including the following elements:

1. Document the routes of exposure and how exposure occurred;
2. Identify and document the source individual, if feasible and not prohibited by law;
3. Obtain consent and test source individual's blood as soon as possible, to determine infectivity and document the source's blood test results;
4. If the source is known to be infectious for HBV and HIFV, testing need not be repeated to determine the known infectivity;
5. Provide the exposed officer/employee with the test results and information about applicable disclosure laws and regulations concerning the source identity and infection status;
6. Obtain consent, collect and test the exposed officer/employee's blood as soon as possible after the exposure incident; and

7. If the exposed officer/employee consents to baseline blood collection, but does not consent to HIV serologic testing, the officer/employee's blood samples must be preserved for at least 90 days. If, within 90 days of the exposure incident, the officer/employee agrees to have the baseline sample tested, the testing shall be conducted as soon as possible.

(c) All officers/employee who experience an exposure incident will be offered post-exposure evaluation and follow-up in accordance with the standard. All post-exposure follow-ups will be performed by Parkview Noble Hospital or a family physician.

(3) *Information provided to the healthcare professional.* The Town Marshal will ensure that the healthcare professional responsible for the officer/employee's Hepatitis B vaccination is provided the information in divisions (G)(2)(b)1. through (G)(2)(b)7.

(4) *Healthcare professional's written opinion.*

(a) The Town Marshal will obtain and provide the officer/employee with a copy of the evaluating healthcare professional's written opinion within 15 days of the completion of the evaluation.

(b) 1. The healthcare professional's written opinion in regard to HBV vaccination will be limited to whether HBV is indicated for the officer/employee, and whether the officer/employee has received the vaccination.

2. The healthcare professional's written opinion for post-exposure follow-up will be limited to a statement that the officer/employee has been informed of the results of the evaluation and told of the need, if any, for further evaluation or treatment.

(H) *Labels and signs.*

(1) The Town Marshal will ensure that biohazard labels are affixed on each container of regulated waste and all hazardous items within the Police Department.

(2) The Town Manager will ensure that all biohazard labels and signs are affixed to all items considered hazardous.

(I) *Information and training.*

(1) The Town Marshal will ensure that training is provided at the time of initial assignment to tasks where occupational exposure may occur, and that it shall be repeated within 12 months of the previous training.

(2) The training program will be tailored to the education level of the officer, and offered during the normal work shift.

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(3) The training will contain the following information:

(a) All procedures to take in case of exposure, and what steps to take; and

(b) All training will be given to officers/employees when there are any changes in tasks or procedures affecting an officer's occupational exposure.

(4) (a) The Town Marshal is responsible for maintaining the training records for the Police Department, which will be kept in the Town Marshal's office of the Town Hall.

(b) Each training record shall include the information specified for each medical record in division (J)(2)(a) through (e)

(J) *Record keeping.*

(1) (a) The Town Marshal is responsible for maintaining medical records for all officers.

(b) The Town Manager is responsible for maintaining medical records for employees.

(c) These records will be kept at the Rome City Town Hall.

(d) Medical records must be kept confidential and maintained for at least the duration of employment plus 30 years.

(2) A confidential medical record for each officer/employee with potential for exposure must be preserved and maintained by employers according to OSHA's rule governing access to officer/employee exposure and medical records. The record shall include:

(a) The officer/employee's name and Social Security number;

(b) The officer/employee's Hepatitis B vaccination status, including dates of all Hepatitis B vaccinations, and any medical records related to the officer/employee's ability to receive vaccinations;

(c) Results of examinations, medical testing, and post-exposure evaluation and follow-up procedures;

(d) The employer's copy of the healthcare professional's written opinion; and

(e) A copy of information provided to the healthcare professional.

(Res. 2003-05, passed 12-8-2003; Am. Ord. 2007-07, passed 7-2-2007)

POLICIES SPECIFIC TO TOWN MARSHALS**§ 34.71 GENERAL PROVISIONS.**

(A) *Subject to the rules and orders of the Town Council.*

(1) It is specifically understood that, while the various department supervisors and the Town Marshal are charged with the day-to-day administration of the departments, the supervisors and Town Marshal are subject to the rules and orders of the Town Council, as expressed in the rules and regulations contained in this chapter as well as otherwise.

(2) Furthermore, in time of emergency, the department supervisors and Town Marshal are subordinate to the Town Council, and shall obey its orders and directions.

(B) *Definitions.* The following statutory definitions, laws and considerations, including amendments hereinafter enacted thereto, are hereby incorporated by reference into this chapter:

- (1) I.C. 36-1-1-1 *et seq.*;
- (2) I.C. 36-1-2-1 *et seq.*;
- (3) I.C. 36-1-3-1 *et seq.*;
- (4) I.C. 36-1-3.5-1 *et seq.*;
- (5) I.C. 36-1-4-1 *et seq.*;
- (6) I.C. 36-1-5-1 *et seq.*;
- (7) I.C. 36-1-6-1 *et seq.*;
- (8) I.C. 36-5-2-1 *et seq.*;
- (9) I.C. 36-5-6-6 *et seq.*;
- (10) I.C. 36-5-7-1 *et seq.*;
- (11) I.C. 36-8-1-1 *et seq.*;
- (12) I.C. 36-8-2-1 *et seq.*;
- (13) I.C. 36-8-3-1 *et seq.*;

(14) I.C. 36-8-3.5-1 *et seq.*;

(15) I.C. 36-8-4-1 *et seq.*; and

(16) I.C. 36-8-5-1 *et seq.*

(1991 Code, §§ 34.01, 34.02) (Ord. 89-01, passed 2-6-1989; Am. Ord. 2007-07, passed 7-2-2007)

§ 34.72 PROBATIONARY PERIOD.

(A) The Town Marshal and Deputy Marshal shall be considered probationary employees for a period of one year after completing the minimum basic training requirements adopted by the Law Enforcement Training Board under I.C. 5-2-1-9.

(B) The Town Marshal, Deputy Marshal and all other police officers shall be deemed probationary employees during the period of their employment prior to the completion of the training program.

(1991 Code, § 34.03) (Ord. 89-01, passed 2-6-1989; Am. Ord. 2007-07, passed 7-2-2007)

§ 34.73 DISCIPLINARY ACTION.

(A) Any Town Marshal or Deputy Marshal may be disciplined by:

- (1) Demotion;
- (2) Dismissal;
- (3) Reprimand;
- (4) Forfeiture; and/or
- (5) Suspension.

(B) Disciplinary action may result upon either:

- (1) Conviction in any court of any crime; or
- (2) A finding and decision by the Town Council that the police officer has been or is guilty of any one or more of the following breaches of discipline:
 - (a) Neglect of duty;

- (b) Violation of rules;
- (c) Neglect or disobedience of orders;
- (d) Incapacity;
- (e) Absence without leave;
- (f) Immoral conduct;
- (e) Conduct injurious to the public peace or welfare;
- (h) Conduct unbecoming an officer; and/or
- (i) Any other breach of discipline.

(1991 Code, §34.04) (Ord. 89-01, passed 2-6-1989; Am. Ord. 2007-07, passed 7-2-2007)

§ 34.74 HEARINGS.

(A) Any non-probationary Town Marshal or Deputy Town Marshal who is suspended in excess of five days, demoted or dismissed is entitled to a hearing before the Town Council, upon application to the Council by the suspended officer within five days of the disciplinary action.

(B) A failure to request a hearing shall be deemed a waiver by the suspended officer of his or her rights to pursue the matter further in a court of law.

(C) The hearing shall be conducted by the Town Council pursuant to the general rules of due process, with notice as provided by law or the rules herein.

(1) Notice not otherwise provided by a statute shall be given at least 48 hours prior to a hearing, with an appropriate advice of rights.

(2) The Town Attorney shall preside over the hearing, but shall have no vote.

(3) The hearing shall be conducted in a fair and impartial manner, and a decision of the majority of the Council members present shall be the Council's decision.

(1991 Code, § 34.05) (Ord. 89-01, passed 2-6-1989; Am. Ord. 2007-07, passed 7-2-2007)

§ 34.75 POLICE RESERVES.

(A) The Police Reserves is a volunteer unit of the Police Department, authorized by the Town Council pursuant to the provisions of I.C. 36-8-3-20.

(B) Reserves officers shall be appointed by the Town Council, and shall be identified and empowered as Deputy Marshals for the town.

(C) In accordance with I.C. 36-8-3-20, the Police Reserves shall obey all rules of the Police Department, and conform to its discipline and orders to the extent these orders do not conflict with the orders of the Town Council.

(D) Police Reserves may be removed by the Town Council at any time without notice and without assigning any cause.

(1991 Code, § 34.07) (Ord. 89-01, passed 2-6-1989; Am. Ord. 2007-07, passed 7-2-2007)

§ 34.76 VEHICLE USE.

In accordance with I.C. 36-8-4-3, members of the Police Department may not use police vehicles owned or maintained by the Police Department outside of the town, except in the performance of official duties or with the express authorization of a member of the Town Council or Town Manager.

(1991 Code, § 34.08) (Ord. 89-01, passed 2-6-1989; Am. Ord. 2007-07, passed 7-2-2007)

§ 34.77 TELEPHONE LISTING.

(A) The Town Marshal shall have a publicly listed telephone number, available through the telephone information service to the general public in case of an emergency.

(B) The number shall also be listed in the local phone directory, in the general alphabetical listing section of the book under the Town Marshal's name.

(1991 Code, § 34.09) (Ord. 89-01, passed 2-6-1989; Am. Ord. 2007-07, passed 7-2-2007)

§ 34.78 OBEDIENCE TO LAWS AND RULES, REGULATIONS OR ORDERS.

(A) All town police officers shall obey all federal, state and local laws.

(B) All town police officers shall obey all written or oral orders issued from the Town Council.

(C) All town police officers who are off duty or otherwise on leave shall conform their conduct to these rules and regulations to the same extent as if they were not off duty or on leave.

(1991 Code, § 34.10) (Ord. 89-01, passed 2-6-1989; Am. Ord. 2007-07, passed 7-2-2007)

§ 34.79 BREACH OF DISCIPLINE.

(A) No police officer shall conduct himself in a manner detrimental to the efficient operation and/or general discipline of the town.

(B) No police officer shall have a record of repeated violations of rules, regulations, orders or policies issued by either the Police Department or the Town Council.

(C) No police officer shall take, destroy or tamper with any document or record of the town; nor shall an police officer remove or copy records or reports, except in accordance with the written directives of either the Police Department or the Town Council.

(D) No police officer shall criticize the department heads or the Town Council or any of the Police Department's officers, if that criticism is in any way defamatory, obscene or unlawful, or tends to impair the efficient operation of the town.

(E) No police officer shall make untruthful comments on the official action of a superior or any other member of the department.

(1991 Code, § 34.11) (Ord. 89-01, passed 2-6-1989; Am. Ord. 2007-07, passed 7-2-2007)

§ 34.80 INSUBORDINATION.

(A) No police officer shall be insubordinate or act with disrespect to any superior or member of the department

(B) All police officers shall promptly obey any lawful order of a superior or member of the Town Council.

(1991 Code, § 34.12) (Ord. 89-01, passed 2-6-1989; Am. Ord. 2007-07, passed 7-2-2007)

§ 34.81 NEGLECT OF DUTY.

(A) All police officers shall report for duty at the assigned time and place, with all necessary equipment and properly attired to perform their duties.

(B) (1) All police officers shall devote full time to their duties during the time they are working for the town.

(2) No police officers shall engage in any activities or personal business during working hours.

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(C) (1) No police officer shall leave his or her assigned duty station or duty patrol, unless properly relieved or by express permission of a superior or member of the Town Council.

(2) In no event shall a police officer leave or be “out of service” without advising his or her superior or dispatcher of his or her whereabouts.

(D) (1) All police officers shall utilize all department equipment and public property only for its intended purpose, in accordance with department procedures or procedures of the Town Council, and shall not abuse, damage or lose department equipment or public property. All department equipment issued to police officers shall be maintained in proper order.

(2) No civilian may be a passenger in a town vehicle unless in custody, or unless a formal waiver of liability is signed and placed on file with the Town Council. No police or publicly owned vehicle may be used for personal purposes.

(E) All police officers shall keep and maintain all essential information on any police investigation for which they have primary responsibility.

(F) All police officers shall make and turn in all reports promptly, accurately and completely.

(G) All police officers who recover or come into possession, custody or control of any stolen, seized or abandoned property shall secure the same, and safekeep it until reclaimed or lawfully disposed of.

(H) No police officer shall testify in any court case, civil, criminal or administrative hearing, except when required by law or department order, or when subpoenaed.

(I) All police officers shall maintain a neat, well-groomed appearance, and shall style their hair, beard, and/or mustache in accordance with departmental or Town Council directives.
(1991 Code, § 34.13) (Ord. 89-01, passed 2-6-1989; Am. Ord. 2007-07, passed 7-2-2007)

§ 34.82 CONDUCT UNBECOMING AN OFFICER.

(A) When dealing with the public, police officers shall not use language or gestures that are rude, indecent, lewd or discourteous.

(B) Town police officers can, in an undercover capacity, consume alcohol, but not to the point of the legal limit of intoxication.

(C) No police officer shall, while off duty and in uniform in any location open to the general public, consume alcoholic beverages or engage in any activities that would be demeaning to the uniform and to the town.

(D) Town police officers shall not mistreat persons who are in their custody, nor shall they mistreat animals. Officers shall handle persons or animals in accordance with law and departmental order.

(E) Town police officers shall not use more force in any situation than is reasonably necessary under the circumstances. Officers shall use force in accordance with law and departmental order.

(F) Town police officers shall only use their weapons in accordance with state law and departmental order.

(G) Town police officers shall not enter into official departmental correspondence or official verbal communication with anyone, except in the performance of their official duty.

(H) Town police officers shall not use their official position, badge or credentials for personal advantage, nor solicit goods, services or gratuities.

(I) Town police officers shall not use their official positions, badge or credentials to avoid the consequences of an illegal act.

(1991 Code, § 34.15) (Ord. 89-01, passed 2-6-1989; Am. Ord. 2007-07, passed 7-2-2007)

§ 34.83 PERFORMANCE TO STANDARDS.

(A) Town police officers shall perform their duties in a manner that will maintain satisfactory standards of efficiency in carrying out the objectives of the department.

(B) (1) Town police officers shall conform to established work standards according to their rank or position.

(2) Nonconformity shall include, but not be limited to, inability or unwillingness to perform assigned duties.

(C) Superiors or commanding officers shall not issue any orders contrary to law or departmental rule or order.

(1991 Code, § 34.16) (Ord. 89-01, passed 2-6-1989; Am. Ord. 2007-07, passed 7-2-2007)

§ 34.84 FAILING TO COOPERATE OR BE TRUTHFUL.

(A) All town police officers shall be cooperative and truthful when testifying in any court, administrative hearing or internal investigation.

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(B) All town police officers shall be truthful in all official reports, correspondence and sworn testimony.

(C) Upon the order of the Town Marshal or Town Council, town police officers shall answer truthfully all questions specifically and directly relating to the performance of their official duties or their fitness for serving as a town police officer.

(1991 Code, § 34.17) (Ord. 89-01, passed 2-6-1989; Am. Ord. 2007-07, passed 7-2-2007)

CHAPTER 35: REVENUE AND FINANCE; TOWN FUNDS

Section

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Cross-reference:

Allocation and deposit of fines, fees, and costs, see § 37.30

Operation and Maintenance Fund, see § 50.017

Purchasing, see Chapter 36

Sewage Works Improvement Fund, see § 50.019

Sewage Works Sinking Fund, see § 50.018

GENERAL PROVISIONS

§ 35.01 AUTHORITY OF CLERK-TREASURER TO INVEST.

The Clerk-Treasurer is hereby authorized to invest surplus monies of the town as the monies become available, or to cash the investments to meet the current obligations of the town.
(1991 Code, § 35.01) (Res. 79-3, passed 6-30-1979; Am. Ord. 83-15, passed 11-7-1983)

§ 35.02 CHARGE FOR RETURNED CHECKS.

A charge of \$25 shall be added to all checks returned for “non-sufficient funds” or for any reason that the bank will charge the town’s checking account.
(Res. 90-08, passed 11-12-1990; Am. Ord. 06-02, passed 4-10-2006)

§ 35.03 CHARGES FOR PHOTOCOPIES.

The price for a single sheet, any size, shall be \$0.10 per copy and the price for a color copy, any size, shall be \$0.25 per copy.
(Res. 95-06, passed 12-27-1995; Am. Res. 2008-02, passed 7-14-2008)

§ 35.04 AUTHORITY OF CLERK-TREASURER TO WRITE OFF UNCOLLECTABLE AMOUNTS.

It shall be the authority of the Clerk-Treasurer to authorize any uncollectable amounts, not in excess of \$40, to be written off at the end of each calendar year; which would include any penalties

that are left on the account at the end of the year, and any insignificant amounts left by renters that are no longer collectable; and would allow the clean-up of many small amounts by the end of the fiscal year.

(Res. 97-07, passed 11-10-1997)

§ 35.05 BANK DESIGNATION.

(A) It is designated that the Farmers State Bank, LaGrange, Indiana, (with a branch in Wolcottville, Indiana) be our designated bank to receive our deposits, either checking, savings, or CDs.

(B) This designation shall be in effect for 1998 and every year thereafter, until the time a new depository is designated.

(Res. 97-10, passed 12-22-1997)

§ 35.06 PAYMENT OF MEMBERSHIP DUES TO ORGANIZATIONS.

(A) The Rome City Town Council is authorized to budget and appropriate funds from the General Fund, or from other funds, to provide membership for the town and the elected and appointed officials and members of the municipality's boards, Council, departments, or agencies in local, regional, state, and national associations of a civic, educational, or governmental nature, which have as their purpose the betterment and improvement of municipal operations.

(B) The Rome City Town Council is further authorized to budget and appropriate funds to pay the expenses of duly authorized representatives to attend the meetings and functions of organizations to which the municipality belongs.

(Ord. 82-4A, passed 8-30-1982)

§ 35.07 AUTHORITY OF CLERK-TREASURER TO PAY CERTAIN CLAIMS OR BILLS IN ADVANCE OF TOWN COUNCIL MEETING.

(A) *Authority for advanced payment of claims.* The Clerk-Treasurer of the town shall have the authority to make claim payments in advance of approval from the Town Council for the following types of expenses:

- (1) License fees or permit fees.
- (2) Utility payments or utility connection charges.
- (3) Federal grant programs if:

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- (a) Advance funding is not prohibited; and
- (b) The contracting party provides sufficient security for the amount advanced.

(4) Grants of state funds authorized by statute.

(5) Payroll.

(6) State, federal or county taxes.

(7) Expenses that must be paid because of emergency circumstances.

(8) Payments to such vendors or service providers which have provided services or goods to the town and for which a delay of payment incurs penalties or late payment charges.

(B) *Expenses described in ordinance.* The Clerk-Treasurer of the town shall additionally have the authority to make claim payments in advance of approval from the Town Council for the following expenses:

(1) Credit card payments.

(2) Line of credit payments.

(C) *Documentation of claims.* The Clerk-Treasurer shall ensure that each payment of expenses paid in advance of Town Council approval shall be supported by a fully itemized invoice or bill and certification by the Clerk-Treasurer.

(D) *Town Council review.* The Town Council shall review and allow a claim at its next regular or special meeting following such claim's pre-approved payment.
(Ord. 92-02, passed 7-6-1992; Am. Ord. 2020-02, passed 4-13-2020)

§ 35.08 CAPITAL ASSET POLICY ESTABLISHED.

The town hereby adopts a capital asset policy. As of January 1, 2005, the threshold for reporting of capital assets shall be a purchase cost of \$5,000. An asset with a purchase cost under \$5,000 will be reported as a current expense during the year of purchase.
(Ord. 05-02, passed 2-15-2005)

§ 35.09 UNIFORM INTERNAL CONTROL STANDARDS.

The town adopts as policy the internal control standards as set forth by the Indiana State Board of Accounts *Uniform Internal Control Standards for Indiana Political Subdivisions Manual* as expressly written and published by the Indiana State Board of Accounts in September, 2015, and as

amended from time to time. In order to implement these standards, the Clerk-Treasurer shall certify in writing that *PERSONNEL* as defined in statute have received the required training. All officers, elected officials and employees are required to comply with the policy. Employees who fail to comply with this policy are subject to discipline, including but not limited to termination of their employment.

(Ord. 2016-04, passed 6-13-2016)

§ 35.10 MATERIALITY THRESHOLD FOR REPORTING IRREGULAR VARIANCES, LOSSES, SHORTAGES AND THEFTS.

(A) When and if an erroneous or irregular variance, loss, shortage, or theft of town funds or property should be encountered, the employee or representative encountering same shall report such to the Town Manager. The Town Manager shall ascertain if the variance, loss, shortage, or theft is in excess of \$500 in value. If same is in excess of \$500 in value, it shall be deemed material, and the Town Manager shall report same to the Town Clerk. The Town Clerk shall cause a report to be made to the state Board of accounts and any entity necessary for purposes of reporting thefts, etc., such as the Town Marshal/County Sheriff, is aware of same, if such is appropriate. The Town Board shall be informed at its next meeting.

(B) The State Board of Accounts shall, pursuant to I.C. 5-11-1-27(j), make recommendation to the Clerk as to methods or policies necessary to be implemented or modified to prevent a recurrence, and said Clerk or other responsible party shall see to it that said procedures are in fact implemented, and report to the Town Board.

(Ord. 2016-01, passed 1-11-2016)

TOWN PROPERTY

§ 35.20 AUTHORITY OF TOWN EMPLOYEE TO SELL TOWN PROPERTY.

(A) No law enforcement officer or employee of the Town of Rome City shall sell any property owned by the Town of Rome City without the prior written consent and approval of the Rome City Town Council.

(B) Upon the prior written approval and sale of town property, the proceeds received from the sale shall be paid over to the Rome City Clerk-Treasurer within 24 hours of receipt of the proceeds, unless the same is a holiday or weekend, which, in that case, would be the next working day.

(Res. 92-02, passed 7-6-1992)

TOWN FUNDS**§ 35.35 GENERAL FUND.**

All monies received by the town, irrespective of source or intended use, shall accrue to and be deposited in the “General Fund” of the town, unless the nature, source, or intended use of the monies are so that a provision of this code, or of law, or of an applicable state or federal administrative regulation, specifies that they accrue to, and be deposited in, some other fund. However, excess receipts from any source over the amount estimated from that source for the General Fund in the approved and certified budget for any fiscal year may be diverted to another fund in the same manner as fines in accordance with the procedure set forth in § 37.30(A), unless required by law to be deposited in the General Fund.

(1991 Code, § 35.10)

§ 35.36 SPECIAL DEPOSIT FUND.

(A) There is hereby created a “Special Deposit Fund” which shall be used for the purpose of depositing and accounting for monies presumptively collected and held by the town only on a temporary basis, including as a security deposit or bond, cash performance bond, any conditional and potentially refundable permit application fees, or monies collected by the town as trustee or agent for another party.

(B) The Clerk-Treasurer may issue warrants from the Special Deposit Fund to make refunds, reimbursements, and payments to persons to whom monies on deposit in the fund are lawfully and properly owing without appropriation.

(C) Whenever any monies on deposit in the Special Deposit Fund escheat to the town or become eligible for permanent possession by the town, the Clerk-Treasurer shall transfer and credit the monies to the General Fund, or to another appropriate fund as provided by law or ordinance.

(D) Monies in the Special Deposit Fund may be invested in securities of sufficiently short-term or liquidity to permit timely payments from the fund as they come owing.

(1991 Code, § 35.11) (Ord. 80-5, passed 2-4-1980; Am. Ord. 83-15, passed 11-7-1983)

§ 35.37 LEVY EXCESS FUND.

In accordance with I.C. 6-1.1-18.5-17, there is hereby established a “Levy Excess Fund” into which there shall be receipted any portion of the town’s annual ad valorem property tax distribution which exceeds 102% of the total ad valorem property tax levy, as provided in the approved and certified town budget for any budget year. Monies in the Levy Excess Fund may only be used for purposes authorized by the State Board of Tax Commissioners.

(1991 Code, § 35.12) (Res. 80-6, passed 12-29-1980; Am. Ord. 83-15, passed 11-7-1983)

§ 35.38 MOTOR VEHICLE HIGHWAY DONATION FUND.

There is hereby established a “Motor Vehicle Highway Donation Fund” for purposes of receipting monies donated specifically to the Motor Vehicle Highway Department for the Town of Rome City. The monies receipted into the Motor Vehicle Highway Donation Fund shall be spent by authorization of the Town Council for the purpose of repairing equipment or purchasing new equipment for the Motor Vehicle Highway Department.

(1991 Code, § 35.13) (Ord. 82-2, passed 3-1-1982)

§ 35.39 CUMULATIVE CAPITAL DEVELOPMENT FUND.

(A) There is hereby re-established the Rome City Cumulative Capital Development Fund.

(B) The Board will adhere to the provisions of I.C. 36-9-15.5. The proposed fund will not exceed \$.0500 on each \$100 of assessed valuation. Said tax rate will be levied beginning with taxes for 2008 payable 2009.

(C) The funds accumulated in the Rome City Cumulative Capital Development Fund will be used for either the purchase of land, to erect and/or maintain a town hall, or for other capital improvements as needed per I.C. 36-9-16-2.

(D) Notwithstanding division (C) above, funds accumulated in the Rome City Cumulative Capital Development Fund may be spent for purposes other than the purposes stated in division (C) above, 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 division 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.

(E) This fund is subject to the approval of the Department of Local Government Finance.
(Ord. 2000-04, passed 11-13-2000; Am. Ord. 2008-05, passed 7-14-2008)

§ 35.40 POLICE DONATION FUND.

It has been determined necessary to establish a “Police Donation Fund” to receive money for the purchase of equipment.

(Res. 87-2, passed 5-4-1987)

§ 35.41 SEWAGE UTILITY CONSTRUCTION FUND.

It has been determined necessary by the Board of Trustees to establish a “Sewage Utility Construction Fund” (610) for separate accounting procedures. All reconstruction and repair expenses of the plant and the collection system of the Rome City Sewage Utility shall be expended from this fund. Effective April 1, 1987, and the first working day of each month forward, the following amount will be transferred from Sewer Operating to Sewage Construction: \$10,000.

(Res. 87-3, passed 5-4-1987)

Cross-reference:

Sewers, see Chapter 50

§ 35.42 PETTY CASH FUND.

It has been deemed necessary to establish a “Petty Cash Fund,” in the amount of \$50, to pay for small emergency needs.

(Res. 88-3, passed 6-6-1988)

§ 35.43 TRAINING SEMINAR FUND.

It has become necessary to establish a non-appropriated fund for the Rome City Police Department to allow them to charge a \$10 fee to representatives of EMS units, or other police units, for the training of their people. This fund shall be called the “Training Seminar Fund” and can only be used for training purposes or for seminar supplies.

(Ord. 94-01, passed 3-7-1994)

§ 35.44 ROME CITY HEALTH AND LIFE INSURANCE ESCROW FUND.

(A) A cumulative nonreverting fund is established for the purpose of implementing a partially self-insured medical and dental reimbursement and life insurance plan for the benefit of the full-time employees of the Town of Rome City. The fund shall be known as the “Rome City Health and Life Insurance Escrow Fund.”

(B) The Town Council shall make quarterly transfers to the fund in an amount determined by it to be actuarially or historically reasonable to pay all or a part of claims; to pay premiums, including premiums for excess coverage; to pay claims management; and to pay any other town obligations as set forth in the medical and dental reimbursement and life insurance plan, as adopted by the Town Council from time to time.

(C) In the event the fund, including all appropriations and any and all income earned thereon, exceeds the costs and/or obligations of the town, the excess shall be utilized as follows:

(1) First, to be placed or remain in reserves to prevent excessive funding increases due to high claim years; and

(2) Second, to provide additional benefits for the full-time employees, the exact details and provisions of which will be established by resolution adopted by the Town Council from time to time.

(D) The Clerk-Treasurer and Town Manager shall take steps as they deem necessary, expedient, or reasonable to determine the amount of proper appropriations for this nonreverting cumulative fund for each successive fiscal year hereafter.

(Ord. 96-11, passed 11-12-1996; Am. Ord. 2010-06, passed 4-12-2010)

§ 35.45 RAINY DAY FUND.

(A) *Creation.* There is hereby established 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.

(B) *Purposes.* 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.

(C) *Transfers to the Fund.* On or before December 31 of each year, the Town Council shall determine the amount, if any, of the unused and unencumbered funds available to be transferred to the Rainy Day Fund, which transfer may not exceed more than 10% of the town’s total budget for that fiscal year.

(D) *Appropriations.* The Town Council may authorize the expenditure of funds from the Rain Day Fund by appropriations made in the same manner as other funds are appropriated that receive tax monies, upon making a finding that the proposed use of the funds is consistent with the intent of the fund.

(Ord. 07-03, passed 2-12-2007)

§ 35.46 RIVERBOAT WAGERING TAX REVENUE SHARING FUND.

There is established a non-reverting fund for the proceeds received from river boat gambling. These proceeds will be disbursed on an annual basis by the state, and known as the “Riverboat Wagering Tax Revenue Sharing.” The Town Council wishes to use these funds for non-recurring capital expenditures such as park equipment or repairs, police equipment, electronic office equipment or similar expenditures.

(Res. 2003-01, passed 9-8-2003)

§ 35.47 LEVY EXCESS FUND.

(A) The Clerk-Treasurer of the Town of Rome City shall create and maintain a fund for the property tax replacement credit HEA 1001 distribution. The fund shall be entitled "Levy Excess Fund".

(B) The revenue deposited in a fund created under division (A) of this section shall revert to the General Fund until further order of the Town Council.

(C) The Clerk-Treasurer shall have the responsibility and discretion of distributing the monies to the General Fund in accordance with applicable law.
(Ord. 2010-08, passed 7-12-2010)

§ 35.48 GRANT HOLDINGS FUND.

(A) The Clerk-Treasurer of the Town of Rome City shall create and maintain a fund for the retention of grant funds received from federal and state agencies until their disbursement according to the provisions of grant related agreements, and for the retention of grant program related income. The fund shall be entitled "Grant Holding Fund".

(B) The revenue deposited in a fund created under division (A) of this section shall not revert to the General Fund from time to time, but rather shall be non-reverting and continue perpetually until further order of the Town Council.

(C) The Clerk-Treasurer shall have the responsibility and discretion of disbursing the monies to the appropriate entities from this fund in accordance with applicable law.
(Ord. 2010-07, passed 6-14-2010)

§ 35.49 LOIT SPECIAL FUND.

(A) At least 75% of the special distribution must be:

(1) Used exclusively by the county, city, or town for:

(a) Engineering, land acquisition, construction, resurfacing, maintenance, restoration, or rehabilitation of both local and arterial road and street systems;

(b) The payment of principal and interest on bonds sold primarily to finance road, street or thorough fare projects;

(c) Any local costs required to undertake a recreational or reservoir road project under I.C. 8-23-5;

(d) The purchase, rental, or repair of highway equipment;

(e) Providing a match for a grant from the local road and bridge matching grand fund under I.C. 8-23-30; or

(f) Capital projects for aviation related property or facilities, including capital projects of a Board of Aviation Commissioners established under I.C. 8-22-3-1; or

(2) Deposited in the county's, city's or town's rainy day fund established under I.C. 36-2-8-5.1. The money deposited in a rainy day fund under this clause may not be appropriated from the rainy day fund or transferred to another fund under I.C. 36-1-8-5.1(g), unless the money will be used exclusively for purposes set forth in clause (A).

(B) The remaining part of the special distribution may be used by the county, city, or town for any of the purposes of the county, city, or town.

(Ord. 2016-05, passed 5-1-2016)

§ 35.50 TOWN DONATION FUND.

Establishing a town donation fund to receive money for projects for the town in accordance with the regulations established in I.C. 36-1-4-10.

(Ord. 2015-07, passed 6-22-2015)

§ 35.51 FUND FOR EXPENDITURE OF PUBLIC SAFETY TAX PROCEEDS.

(A) There is created by the town a fund for the deposit of sums paid to the town by Noble County, representing said town's share of said additional tax rate, as determined by I.C. 6-3.5-6-31 et. seq.

(B) The fund may be utilized by the town for any expenditure deemed appropriate by I.C. 6-3.5-6-31(a)(1-13), and further, for any and all other expenditures deemed consistent with and permissible by Indiana Code, the Indiana State Board of Accounts, the Indiana Attorney General, or any other appropriate entity, said expenditures and permissible purposes therefore to be deemed and drawn as generally as possible.

(C) Monies expended from this fund shall be subject to the budgetary constraints, as determined by Indiana Code, the Indiana Department of Local Government Finance, Indiana State Board of Accounts, or other appropriate governmental entity.

(Ord. 2017-02, passed 2-13-2017)

§ 35.52 COVID/CARES PROVIDER RELIEF FUND.

There is hereby established Fund 150 titled COVID/CARES Provider Relief Fund to receive proceeds from Indiana Finance Authority Coronavirus Relief Fund Program for expenditures related to Coronavirus (COVID).

(Ord. 2020-12, passed 10-26-2020)

CHAPTER 36: PURCHASING

Section

- 36.01 Establishment
- 36.02 Publication of notices
- 36.03 Receiving offers
- 36.04 Protection of offers; status of documents as public records
- 36.05 Discussions with offerors
- 36.06 Delay of opening of offers
- 36.07 Awarding contracts through requests for proposals
- 36.08 Evidence of financial responsibility
- 36.09 Purchases of designated types of supplies
- 36.10 Purchases of services
- 36.11 Small purchases
- 36.12 Special purchasing methods
- 36.13 Other procedures governing purchases
- 36.14 Modification and termination of contracts
- 36.15 Restrictions on purchases
- 36.16 Town credit cards

Cross-reference:

Town Funds, see § 35.35 et seq.

§ 36.01 ESTABLISHMENT.

(A) The Clerk-Treasurer's office Purchasing Agency (the "Purchasing Agency") is established as the purchasing agency for the Town of Rome City.

(B) The Purchasing Agency shall have all the powers and duties authorized under I.C. 5-22, as may be supplemented from time to time by ordinances adopted by the Council and policies adopted by the Purchasing Agency.

(C) The Purchasing Agency shall act as the purchasing agency for every agency, board, office, branch, bureau, commission, council, department, or other establishment of the town.

(D) The Purchasing Agency may designate, in writing, any employee of the town as a purchasing agent.

(Ord. 98-02, passed 6-8-1998)

§ 36.02 PUBLICATION OF NOTICES.

(A) *Invitation for bids.* All notices of invitation for bids shall be published in accordance with I.C. 5-3-1 in the Kendallville News-Sun. The purchasing agent shall schedule the publication of notice to provide a reasonable amount of time for preparation and submission of bids. The notice will be published two times, at least one week apart. The second publication must occur at least ten days prior to the date the bids will be opened.

(B) *Request for proposals.* All notices of request for proposals shall be published in accordance with I.C. 5-3-1 in the Kendallville News-Sun. The purchasing agent shall schedule the publication of notice to provide a reasonable amount of time for preparation and submission of proposals. The notice will be published two times, at least one week apart. The second publication must occur at least seven days prior to the date the proposals will be opened.

(C) *Request for specifications.* All notices of request for specifications shall be published in accordance with I.C. 5-3-1 in the Kendallville News-Sun. The purchasing agent shall schedule the publication of notice to provide a reasonable amount of time for preparation and submission of proposals. The notice will be published two times, at least one week apart. The second publications must occur at least seven days prior to the date the proposals will be opened.

(D) *Electronic notices.* Whenever a notice or other material, including specifications, an invitation for bids, request for proposals, or request for specifications, is sent by mail, the purchasing agent may also send the notice or the material by electronic means, provided that the transmission of the information is at least as efficient as mailing the information.

(Ord. 98-04, passed 6-8-1998)

§ 36.03 RECEIVING OFFERS.

(A) *Opening of offers.* Bids received in response to an invitation for bids must be opened publicly in the presence of at least one or more witnesses at the time and place designated in the invitation for bids. Proposals received in response to a request for proposals must be opened so as to avoid disclosure of the contents to competing offerors during the process of negotiation. Proposals received in response to a request for specifications may be opened as specified in the request for specifications.

(B) *Electronic receipt of offers.* The purchasing agency may receive electronic offers in response to an invitation for bids, request for proposals, or request for specifications. The purchasing agency may only receive an electronic offer if:

(1) The solicitation includes the procedure for the electronic transmission of the offer; and

(2) The purchasing agency receives the offer on a fax machine, or other system, with a security feature that protects the contents of an electronic offer with the same degree of protection as provided to an offer not transmitted electronically.

(C) *Correction and withdrawal of bids.* An offeror may correct inadvertent errors in a bid up to the time at which bids will be opened by supplementing the erroneous bid and submitting a revised bid. A bidder may not supplement an inadvertently erroneous bid after the time at which the bids were opened. A bidder may withdraw a bid containing inadvertent errors up to the time at which bids will be opened and for a period of not more than 24 hours after the time at which the bids were opened.

(D) *Cancellation of solicitation.* When the purchasing agent makes a written determination that it is in the county's best interests, the purchasing agent may cancel a solicitation or reject all offers, provided that the solicitation included information concerning the procedure for cancellation.
(Ord. 98-04, passed 6-8-1998)

§ 36.04 PROTECTION OF OFFERS; STATUS OF DOCUMENTS AS PUBLIC RECORDS.

(A) *Protection of offers prior to opening.* The purchasing agent shall retain all offers received in a secure location prior to the date and time at which offers will be opened in order to prevent disclosure of the contents prior to the opening of the offers.

(B) *Unobstructed evaluation of offers.* After offers have been opened, the purchasing agent shall be responsible for maintaining the offers in a manner that permits evaluation of the offers by the persons responsible for evaluating the offers.

(C) *Public records status of bids.* Bids submitted in response to an invitation for bids must be available for public inspection and copying after the time of the bid opening.

(D) *Register of proposals.* The purchasing agent shall prepare a register of proposals for each request for proposals issued, which shall contain information concerning the proposals for public inspection and copying. Proposals may not be disclosed.
(Ord. 98-03, passed 6-8-1998)

§ 36.05 DISCUSSIONS WITH OFFERORS.

The purchasing agent may conduct discussions with, and best and final offers may be obtained from, responsible offerors who submit proposals determined to be reasonably susceptible to being selected for a contract award.
(Ord. 98-03, passed 6-8-1998)

§ 36.06 DELAY OF OPENING OF OFFERS.

When the Town Council makes a written determination that it is in the town's best interests, offers may be opened after the time stated in the solicitation. The date, time, and place of the rescheduled opening must be announced at the time and place of the originally scheduled opening.
(Ord. 98-03, passed 6-8-1998)

§ 36.07 AWARDING CONTRACTS THROUGH REQUESTS FOR PROPOSALS.*(A) Requests for proposals.*

(1) A purchasing agent may award a contract through a request for proposals procedure instead of competitive sealed bidding when the purchasing agent makes a written determination that the use of competitive sealed bidding is either not practicable or not advantageous to the governmental body.

(2) The governmental body may also provide by rule or policy that:

(a) It is either not practicable or not advantageous to the governmental body to purchase specified types of supplies by sealed competitive bidding; and

(b) Receiving proposals is the preferred method for purchase of that type of supply.

(3) A request for proposals must include:

(a) The factors or criteria that will be used to evaluate the proposals;

(b) A statement concerning the relative importance of price and the other evaluation factors;

(c) A statement concerning whether the proposal must be accompanied by a certified check or other evidence of financial responsibility, which may be imposed in accordance with rules adopted by the governing body; and

(d) A statement concerning whether discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible to being selected for award.

(4) A request for proposals must be given, in accordance with I.C. 5-3-1, two times, at least one week apart, with the second publication occurring at least ten days prior to the date the proposals will be received. The purchasing agent must see that notice is published.

(5) Proposals must be opened so as to avoid disclosure of contents to competing offerors during the process of negotiations.

(6) A register of proposals must be prepared and open for public inspection after a contract award. The register must include:

(a) A copy of the request for proposals;

(b) A list of all persons to whom copies of the request for proposal were given; and

(c) A list of all proposals received, including the following information:

1. The names and addresses of all offerors;
2. The dollar amount of each offer;
3. The name of the successful offeror and the dollar amount of that offeror's offer;
4. The basis on which the award was made; and
5. The entire contents of the contract file, except for proprietary information included with an offer, including trade secrets, manufacturing processes, and financial information that was not required to be made available for public inspection under the terms of the request for proposals.

(7) As provided in the request for proposals, or under the rules or policies of the governmental body, discussions may be conducted with, and best and final offers obtained from, responsible offerors who submit proposals determined to be reasonably susceptible to being selected for an award.

(B) *Contract award.*

(1) A contract shall be awarded to the responsible offeror whose proposal is determined, in writing, to be the most advantageous to the governmental body, taking into consideration price and the other evaluation factors set forth in the request for proposals. If provided for in the request for proposals, contracts may be awarded to more than one offeror whose proposals are determined, in writing, to be the most advantageous to the governmental body, taking into consideration price and the other evaluation factors. The only factors or criteria that may be used in the evaluation of proposals are those specified in the request for proposals.

(2) Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals.

(3) In conducting a discussion with an offeror, information derived from proposals submitted by competing offerors may not be disclosed.
(Ord. 98-04, passed 6-8-1998)

§ 36.08 EVIDENCE OF FINANCIAL RESPONSIBILITY.

(A) *Purchases less than \$25,000.* The purchasing agent may not require evidence of financial responsibility when the estimated cost of a purchase is less than \$25,000.

(B) *Purchases between \$25,000 and \$100,000.* The solicitation may include a requirement that an offeror provide evidence of financial responsibility. If evidence of financial responsibility is required, the solicitation must indicate the kind of evidence that will be acceptable. If a bond or certified check is required, it may not exceed 10% of the estimated cost of the purchase.

(C) *Purchases over \$100,000.* The solicitation shall include a requirement that an offeror provide evidence of financial responsibility and must indicate the kind of evidence that will be acceptable. If a bond or certified check is required, it may not exceed 10% of the estimated cost of the purchase.

(D) *Small business set-asides.* The purchasing agent may determine that no evidence of financial responsibility shall be required for a small business set-aside purchase.
(Ord. 98-03, passed 6-8-1998)

§ 36.09 PURCHASES OF DESIGNATED TYPES OF SUPPLIES.

The Town determines that it is either not practicable or not advantageous to purchase certain types of supplies by sealed competitive bidding, and receiving proposals is the preferred method for purchasing the following types of supplies:

(A) Office supplies;

(B) Routine supplies; and

(C) Gasoline and oils.

(Ord. 98-03, passed 6-8-1998)

§ 36.10 PURCHASES OF SERVICES.

The town determines that each town agency and department may purchase services, except for the services of attorneys, in whatever manner the purchaser determines to be reasonable. The town purchasing agency may not require any town agency, department, or office to purchase services in any particular manner.

(Ord. 98-03, passed 6-8-1998)

§ 36.11 SMALL PURCHASES.

(A) *Purchases less than \$25,000.* The purchasing agent may purchase supplies with an estimated cost of less than \$25,000 on the open market without inviting or receiving quotes. A purchasing agent may make a purchase of less than \$25,000 under small purchase policies established by the purchasing agency or under rules adopted by the governmental body.

(B) *Purchases between \$25,000 and \$75,000.* A purchasing agent may purchase supplies by inviting quotes from at least three persons known to deal in the lines or classes of supplies to be purchased. The purchasing agent shall mail an invitation to quote at least seven days before the time fixed for receiving quotes. If the purchasing agent receives a satisfactory quote, the purchasing agent shall award a contract to the lowest responsible and responsive bidder for each line or class of supplies quoted. A purchasing agent may reject all quotes. If the purchasing agent does not receive a quote from

a responsible and responsive offeror, the purchasing agent may purchase the supplies using methods for special purchases.

(Ord. 98-04, passed 6-8-1998)

§ 36.12 SPECIAL PURCHASING METHODS.

Notwithstanding any other provision of I.C. 5-22, a purchasing agent may make a purchase without soliciting bids or proposals, if the purchasing agent uses the following special purchasing methods.

(A) A special purchase must be made with competition as is practicable under the circumstances.

(B) A purchasing agent may make a special purchase:

(1) When there exists, under emergency conditions, a threat to public health, welfare, or safety;

(2) When there exists a unique opportunity to obtain supplies or services at a substantial savings to the governmental body;

(3) At an auction;

(4) Of data process contracts or license agreements for software programs or supplies or services when only one source meets the using agency's reasonable requirements;

(5) When:

(a) The compatibility of equipment, accessories, or replacement parts is a substantial consideration in the purchase; and

(b) Only one source meets the using agency's reasonable requirement.

(6) When purchase of the required supplies or services under another purchasing method, provided under I.C. 5-22, would seriously impair the functioning of the using agency;

(7) When the purchasing agency has solicited for a purchase under other methods, provided for in I.C. 5-22, and has not received a responsive offer;

(8) For the evaluation of supplies, or a system containing supplies, for any of the following reasons:

(a) To obtain functional information or comparative data; or

(b) For a purpose that, in the judgment of the purchasing agent, may advance the long-term competitive position of the governmental body.

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(9) When the market structure is based on price, but the governmental body is able to receive a dollar or percentage discount of the established price; and/or

(10) From a public utility, if the price is a negotiated price that considers the results of an independent appraisal obtained by the public utility and a separate independent appraisal obtained by the purchasing agency.

(C) A purchasing agent may award a contract for a supply when there is only one source for the supply, and the purchasing agent determines, in writing, that there is only one source for the supply.

(D) A purchasing agent may make a purchase from a person when the purchasing agent determines, in writing, that:

(1) Supplies can be purchased from the person, or the person's authorized representative, at prices equal to or less than the prices stipulated in current federal supply service schedules established by the General Services Administration; and

(2) It is advantageous to the governmental body's interest in efficiency and economy.

(E) A purchasing agent may purchase supplies if the purchase is from a person who has a contract with a federal agency, and the person's contract with the federal agency requires the person to make the supplies available to the state or political subdivisions.

(F) A purchasing agent for a political subdivision may purchase supplies if the purchase is made from a person who has a contract with a state agency, and the person's contract with the state agency requires the person to make the supplies or services available to political subdivisions.

(G) A purchasing agent may acquire supplies if the purchasing agent determines that the governmental body can obtain the transfer of the supplies from the federal government as federal surplus property at a cost less than would be obtained from the purchase of the supplies by soliciting for bids or proposals.

(1) A governmental body may not make a purchase of federal surplus property if title to the property will be transferred to the governmental body before sufficient funds have been appropriated.

(2) A governmental body may make a purchase of federal surplus property if:

(a) The supplies will be transferred under a conditional sale or lease, a lease with an option to purchase, or a contract for the use of the supplies; and

(b) Sufficient funds are appropriated to pay the consideration for one year of the agreement.

(3) A governmental body that purchases or leases surplus federal material shall give notice of the purchase or lease, in accordance with I.C. 5-3-1, one time, no later than 30 days after the purchase.

(H) A purchasing agent for a board of aviation commissioners or an airport authority may make a special purchase of petroleum products, if the petroleum products are for resale to the general public.

(I) A purchasing agent may acquire supplies by accepting a gift on behalf of the governmental body.

(J) A purchasing agent shall maintain the contract records for a special purchase in a separate file. The contract file for special purchases must contain a written determination of the basis for:

- (1) The special purchase; and
- (2) The selection of the contractor.

(K) A governmental body shall maintain a record listing all contracts made for special purchases for a minimum of five years. The records must contain:

- (1) Each contractor's name;
- (2) The amount and type of each contract; and
- (3) A description of the supplies purchased under each contract.

(L) The contract records for a special purchase are subject to annual audit by the State Board of Accounts.

(Ord. 98-04, passed 6-8-1998)

§ 36.13 OTHER PROCEDURES GOVERNING PURCHASES.

(A) A solicitation may provide that offers will be received and contracts will be awarded separately or for any combination of lines or classes of supplies or services contained in the solicitation.

(1) If the solicitation does not indicate how separate contracts might be awarded, the purchasing agent may award separate contracts to different offerors only if the purchasing agent makes a written determination that the award of separate contracts is in the interest of efficiency or economy.

(2) If the purchasing agent awards a contract for a line or class of supplies or services, or any combination of lines or classes, to an offeror other than the lowest offeror, the purchasing agent must make a written determination stating the reasons for awarding a contract to that offeror.

(B) A solicitation may provide that the purchasing agent will award a contract for supplies or services for an unspecified number of items at a fixed price per unit, and that the contract may contain a formula or method for the escalation of the unit price.

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(C) A notice or other materials that are to be sent by mail may be sent by electronic means, as provided for in rules adopted by the governmental body, written policies of the purchasing agency, or the solicitation; provided that the rules, policies, or solicitation provide that the electronic transmission of the information is at least as efficient and secure as sending the information by mail.

(D) A governmental body may receive electronic offers if:

(1) The solicitation describes the procedure for transmitting the electronic offer; and

(2) The governmental body receives the transmission on a fax machine or other system with a security feature that protects the contents of the offer with the same degree of protection as the content of an offer not transmitted electronically.

(E) Whenever public notice of a purchase is required, it must be done in accordance with I.C. 5-3-1. The purchasing agent may notice in addition to notice given under I.C. 5-3-1 if the purchasing agent determines it will increase competition. The purchasing agent shall schedule all notices to provide a reasonable amount of time for preparation and submission of responses after notification. The period between the last publication, mailing, or posting of notices and the final date for submitting offers must be at least seven days. Note that, with respect to receiving bids, I.C. 5-3-1 requires at least ten days between the last publication and the final date for submitting bids.

(F) The purchasing agent may cancel a solicitation or reject all offers, in whole or in part, as specified in the solicitation, if the purchasing agent determines it is in the best interests of the governmental body. The reasons for a cancellation of a solicitation or a rejection of all offers must be made part of the contract file.

(G) An offer may be opened after the time stated in the solicitation if the governmental body makes a written determination that it is in the best interest of the governmental body to delay the opening; and the date, time, and place of the rescheduled opening is announced at the date, time, and place of the originally scheduled opening.

(H) Generally speaking, contract and purchasing records are public records subject to public inspection and copying in accordance with the Public Records Statute. However, a governmental body may establish policies or adopt rules for the protection of documents submitted to the governmental body in response to a solicitation. The rules or policies may provide procedures for:

(1) Protection of offers before opening to prevent disclosure of the contents;

(2) Affording unobstructed evaluation of offers and the contract awards by the purchasing agent after opening; and

(3) Protection of offers from tampering before and after opening.

(Ord. 98-04, passed 6-8-1998)

§ 36.14 MODIFICATION AND TERMINATION OF CONTRACTS.

(A) *Price adjustments.* The purchasing agent may include provisions to permit price adjustments in a purchase contract. The following provisions for price adjustments may be included.

(1) Price adjustments must be computed by agreement on a fixed price adjustment before the beginning of the pertinent performance or as soon after the beginning of performance as possible;

(2) Price adjustments must be computed by unit prices specified in the contract agreed upon;

(3) Price adjustments must be computed by costs attributable to the events or situations under the clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

(4) Price adjustments must be computed in the other manner as the contracting parties may mutually agree upon; or

(5) In the absence of agreement by the parties, price adjustments must be computed by a unilateral determination by the governmental body of the costs attributable to the events or situations under the clauses with adjustment of profit or fee, all as computed by the governmental body in accordance with applicable rules adopted by the governmental body.

(B) *Adjustments in time of performance.* The purchasing agent may include provisions in a purchase contract concerning adjustments for time of performance under the contract.

(C) *Unilateral rights of town.* The purchasing agent may include in a purchase contract provisions dealing with the unilateral right of the town to order changes in the work within the scope of the contract, or to order temporary work stoppage or delays in time of performance.

(D) *Quantity variations.* The purchasing agent may include in a purchase contract provisions dealing with variations between the estimated quantities of work in a contract and the actual quantity delivered.

(Ord. 98-03, passed 6-8-1998)

§ 36.15 RESTRICTIONS ON PURCHASES.

(A) *Purchases from the Department of Correction.*

(1) A governmental body shall purchase supplies and services produced or manufactured by the Department of Correction as listed in the Department's printed catalog, unless the supplies and services cannot be furnished in a timely manner.

(2) Supplies and services purchased from the Department of Correction must meet the specifications and needs of the purchasing governmental body, and be purchased at a fair market price.

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(3) If these requirements are not met, the governmental body is not required to purchase supplies from the Department of Correction.

(4) The Department of Correction shall furnish each governmental body a catalog containing supplies and services available for sale, and prices of supplies and services available for sale.

(B) Purchase of rehabilitation center products.

(1) A governmental body shall purchase articles produced by the state rehabilitation center for the blind and visually impaired under the same conditions as articles produced by the Department of Correction, unless similar articles are produced by the governmental body.

(2) The state rehabilitation services bureau shall publish a catalog for the use of the governmental bodies, showing the products and services available through the rehabilitation center.

(3) Whenever a governmental body needs an article listed in the catalog, the governmental body shall give the bureau a reasonable time to produce or supply the article; and, except for an article produced by the Department of Correction, may not elsewhere contract for, purchase, or pay a bill for an article described in the catalog, unless the article cannot be furnished by the bureau.

(4) A governmental body may contract elsewhere for the purchase of an article described in the catalog, if the bureau provides a written statement that the bureau cannot furnish the article.

(5) Supplies purchased from the bureau must meet the specifications and needs of the purchasing governmental body, and be purchased at a fair market price.

(6) If these requirements are not met, the governmental body is not required to purchase supplies from the bureau.

(C) Purchases from qualified nonprofit agencies for persons with severe disabilities.

(1) A governmental body that is a political subdivision may purchase supplies and services from a qualified nonprofit agency for persons with severe disabilities under the same conditions as supplies produced by the Department of Correction are purchased.

(2) A governmental body may apportion purchases of supplies and services from qualified agencies on an equitable basis among the interested qualified agencies.

(3) Supplies purchased from a qualified agency must meet the specifications and needs of the purchasing governmental body and be purchased at a fair market price.

(D) Purchase of supplies manufactured in the United States. Supplies manufactured in the United States shall be specified for all county purchases and shall be purchased, unless the county determines that:

(1) The supplies are not manufactured in the United States in reasonably available quantities;

(2) The prices of the supplies manufactured in the United States exceed by an unreasonable amount the prices of available and comparable supplies manufactured elsewhere;

(3) The quality of the supplies manufactured in the United States is substantially less than the quality of comparably priced available supplies manufactured elsewhere; or

(4) The purchase of supplies manufactured in the United States is not in the public interest. (Ord. 98-04, passed 6-8-1998; Am. Ord. 98-05, passed 6-8-1998)

§ 36.16 TOWN CREDIT CARDS.

The Town Clerk/Treasurer is hereby authorized to obtain a credit card in the name of the town under the following restrictions and controls:

(A) The credit card may be used for expenses for the town only.

(B) No credit card issued to the town shall be used for a private or other non-town purchases.

(C) When not in use, the credit card shall be maintained in the respective town Clerk/Treasurer's personal possession.

(D) The town Clerk/Treasurer should maintain a log, which includes the name of the individual requesting usage of the credit card, estimated amounts and accounts to be charged, and the date the credit card is issued and returned.

(E) The employee using the credit card shall be responsible for all late fees resulting from the failure to submit the credit card slip and detailed receipt in a timely manner for payment.

(F) The employee using the credit card shall be responsible for all costs billed for which the credit cards slip and a detailed receipt is not filed.

(Ord. 2016-02, passed 2-8-2016)

CHAPTER 37: CODE ENFORCEMENT

Section

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GENERAL PROVISIONS

§ 37.01 GENERAL ENFORCEMENT POLICY.

Whenever any provision of this code requires or mandates any person to perform some act or to bring about or maintain some circumstance or state of affairs; or prohibits, restrains, or regulates the

behavior of any person to the commission of any act or the bringing about or maintaining of any circumstance or state of affairs on the part of any person; and a penalty of fine or some other procedure to compel compliance with the provisions is prescribed in this code, then the provision shall be considered an enforcement provision. Unless some different procedure is expressly set forth and prescribed by the particular chapter, subchapter, or section of this code containing the enforcement provision, the enforcement of any provision shall be administered in accordance with the provisions of this chapter.

(1991 Code, § 37.01)

§ 37.02 DUTY OF TOWN MARSHAL.

Unless some other official, board, commission, or similar entity is expressly designated as the primary enforcement officer or authority responsible for the administration and enforcement of a particular enforcement provision, it is the duty of the Town Marshal, acting himself or herself, or through his or her lawful deputies, to take all steps necessary for the effective enforcement and bringing about of compliance with all enforcement provisions. Whenever the Town Marshal, based upon his or her own vigilance or upon the information or complaint of any other official or any citizen, has probable cause to believe that a violation or failure to comply with any enforcement provision has occurred or is occurring, he or she shall, with due diligence, investigate the matter, ascertain the facts, and collect the testimony, information, or other evidence as in his or her judgment may be necessary to support the facts. If, incident upon the investigation, the Town Marshal determines with a degree of certainty sustained by a preponderance of the evidence that some known person has violated, or failed to comply with, or is violating or failing to comply with, any enforcement provision, he or she shall issue and serve upon the alleged offender, in person or by mail if so provided, a citation for the violation comprising a complaint and summons to appear and answer to the charge of the violation as hereafter prescribed in this chapter; or else he or she shall initiate, or cause to be initiated, the other enforcement procedures as may alternatively be prescribed in the event of a violation of the particular enforcement provision.

(1991 Code, § 37.02)

§ 37.03 ENFORCEMENT BY OTHER OFFICIALS OR ENTITIES.

(A) Whenever in this code any official, board, commission, or similar entity is given responsibility, instead of or concurrent with that of the Town Marshal, for the administration and enforcement of any enforcement provision, he or she or they shall perform the same duties and functions with respect to the enforcement of the provision as are prescribed for the Town Marshal under § 37.02.

(B) For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

ENFORCEMENT OFFICER. The other officials, boards, commissions, or similar entities, or their properly authorized agents.

(1991 Code, § 37.03)

§ 37.04 FURTHER ENFORCEMENT RULES AND PROCEDURES.

The Clerk-Treasurer, the Town Attorney, the Town Marshal, and the chief officer of any other department, board, commission, or similar agency which has been given responsibility for the administration and enforcement of any enforcement provision of this code, may stipulate or prescribe any other rules or procedures, not inconsistent with law, applicable state regulations, court procedures, or the expressed provisions of the chapter, as they may deem necessary or desirable to promote the orderly, efficient, and expeditious carrying out of their respective enforcement duties; and the rules and procedures so stipulated and prescribed by the officers shall have the same effect and force as if they had been expressly adopted and made a part of the provisions of this chapter. (1991 Code, § 37.20)

ENFORCEMENT PROCESSES**§ 37.15 ISSUANCE OF CITATION; SERVICE IN PERSON.**

(A) Whenever an enforcement officer issues a citation for violation of any enforcement provision, the enforcement officer may, pursuant to I.C. 34-4-32-2, detain the person for a sufficient time to:

- (1) Inform the person of the allegation;
- (2) Obtain the person's name, address, and date of birth, or driver's license if in his or her possession, for purposes of identification; and/or
- (3) Allow the person to execute a notice to appear in court to answer the charges of the violation, except as provided in § 37.18.

(B) If the person being charged refuses to provide the information or driver's license as required by division (A)(2) above, the enforcement officer shall inform the person that the refusal constitutes a violation of state law and commits a Class C misdemeanor pursuant to I.C. 34-4-32-3, and may subject the person to arrest and further penalties as may be provided for the offense. If the person continues to refuse to provide the information or driver's license, the enforcement officer, if a duly constituted police officer, may immediately arrest the person on a charge of having committed a Class C misdemeanor; if the enforcement officer is not a duly constituted police officer authorized to exercise power of arrest, he or she shall continue to detain the person for the period of time as is reasonably necessary to summon the duly constituted police officer, who shall arrest the person on a charge of having committed a Class C misdemeanor.

(C) If the person being charged with a violation is a corporation, partnership, company, or other organization other than a natural person, the enforcement officer shall serve the citation upon the resident agent for a service of process, a director, principal, or principal officer of the corporation, company, or other organization having the power and authority under the organizing documents, charter, or rules

of the corporation, company, or other organization to accept process and execute a notice to appear on behalf of the organization. If the offense charged is one arising out of the condition or use of any real or personal property for which the person owning or holding the property is made liable, and the property is owned or held by more than one person in joint tenancy or partnership, it shall be sufficient to issue and serve the citation on any one of the joint tenants or partners. If the person being charged with a violation is a minor child and, in the opinion of the enforcement officer, the child is of a young age or immature character so as not to fully understand the significance of the citation and notice to appear and his or her responsibilities and obligations thereunder, the enforcement officer shall ascertain the name and address of a parent or legal guardian of the child and shall serve the citation upon and cause the parent or legal guardian to execute the notice to appear on behalf of the child.

(1991 Code, § 37.04)

§ 37.16 SERVICE OF CITATION BY MAIL.

Whenever it is found by an enforcement officer that any identifiable person has violated or is violating any enforcement provision, or is liable and accountable for the violation, but the person cannot be conveniently confronted and served in person with a citation as provided in § 37.25, then it is permissible for the enforcement officer to issue the citation for violation and cause it to be served by registered or certified mail with return receipt of delivery to the last known address of the alleged offender. When a citation is served in this manner, the person upon whom it is served is not required to execute a notice to appear nor to deposit any security as guarantee for appearance as would or might otherwise be required pursuant to § 37.17; but in addition to any other information and notices to be included with the citation as hereafter provided, a citation served by mail shall include a statement that failure to appear in court at the time and place indicated to answer the charge, or to compromise and settle the complaint within the allotted time, may subject the offender to further proceedings and additional costs.

(1991 Code, § 37.05)

§ 37.17 NOTICE TO APPEAR; REFUSAL TO SIGN; SECURITY FOR RELEASE.

Any person who is a resident of the State of Indiana and is detained by an enforcement officer for the purpose of issuing and serving a citation for violation of an enforcement provision, and who provides the enforcement officer with a satisfactory identification in accordance with § 37.15(A)(2) and executes a signed notice to appear in court in accordance with § 37.15(A)(3), shall thereupon be released from detention without other bond or security for appearance. However, if the person is not a resident of the State of Indiana and/or refuses to sign a notice to appear in court, the following additional procedures and requirements apply before the enforcement officer releases the person from detention, as the appropriate case may be.

(A) If the person is a resident of the State of Indiana and the offense charged is a violation of an enforcement provision constituting a moving traffic offense or a non-moving traffic offense required by law or regulation to be reported to the Indiana Commissioner of Motor Vehicles, and the person refuses to sign the notice to appear, the enforcement officer, before releasing the person, shall inform him or

her that, notwithstanding his or her refusal to sign the notice, he or she is obliged by law to appear at the time and place indicated in the citation, or to previously compromise and settle the complaint in the manner hereafter provided, and that failure to do so will result in his or her arrest on warrant of the court and/or suspension of his or her driver's license in accordance with I.C. 9-30-3-8(a) and I.C. 9-30-3-8(c), respectively.

(B) If the person is a nonresident of the State of Indiana and the offense charged is a violation of an enforcement provision constituting a moving traffic offense or a non-moving traffic offense required by law or regulation to be reported to the Indiana Commissioner of Motor Vehicles, the enforcement officer shall, before releasing the person, require the person to deposit a security for appearance of the type described by I.C. 9-30-25(b)(1) or (b)(2), and in the manner prescribed by I.C. 9-30-2-5(d), (e), or (f) respectively, and also to execute a security deposit agreement as described by I.C. 9-30-2-5(c); and, if the person refuses to sign a notice to appear, the enforcement officer shall also inform the person that, notwithstanding his or her refusal to sign the notice, he or she is obliged by law to appear at the time and place indicated in the citation, or to previously compromise and settle the complaint in the manner hereafter provided, and that failure to do so will result not only in the forfeiture of the security provided but will also cause the court to notify the Commissioner of Motor Vehicles of his or her failure to appear, which will result in the suspension of driving privileges in Indiana and that a copy of the order of suspension will also be sent to the equivalent authority of the person's home state in accordance with I.C. 9-30-3-8(b) and (c); or else the enforcement officer shall accompany the offender to the nearest U.S. Postal Service receptacle and see that the offender mails to the Clerk of the Noble County Court a copy of the citation with a signed admission of guilt and a check or money order in the amount of fine requested, as determined pursuant to § 37.23 of this chapter, plus court costs, thus compromising and settling the complaint in accordance with § 37.24(B).

(C) If the person is a nonresident of the State of Indiana, or is a resident of the State of Indiana but refuses to sign a notice to appear in court, and the offense charged is of a kind other than a moving traffic offense required to be reported to the Indiana Commissioner of Motor Vehicles, the enforcement officer shall, before releasing the person, accompany the person to the office of the Town Clerk-Treasurer, where the person shall be released upon either:

(1) Depositing with the Clerk-Treasurer a security as guarantee for appearance; the security being a deposit of cash, traveler's checks, or other valuable securities or property acceptable to the Clerk-Treasurer and at least equal in value to the amount of fine requested in the complaint exclusive of costs which could be imposed by the court were the person to appear and be convicted, for which security the Clerk-Treasurer shall provide the person with a proper receipt and shall make an understanding and agreement with the person that, should he or she fail to appear to answer the charge or fail to compromise and settle the complaint before the appearance as hereafter provided, the security thus deposited will be forfeit in favor of the town and in settlement of the complaint, but will be fully refunded or restored to the person if he or she does appear at the place and time prescribed or does previously compromise and settle the complaint; or

(2) Compromising and settling the complaint at that time in the manner provided by § 37.24(A) of this chapter.

(D) However, if the office of the Clerk-Treasurer is not open for business at the time the citation is served, the enforcement officer, in lieu of the above procedure, shall accompany the person to the nearest United States Postal Service receptacle and shall supply the person with a stamped envelope addressed to the office of the Clerk-Treasurer, and shall ascertain that the person deposits therein and mails either a security for appearance and a signed security deposit agreement of the type described in division (C)(1) above, or else his or her copy of the citation and an amount of payment necessary to compromise and settle the complaint in accordance with § 37.24(A) of this chapter, and the enforcement officer shall thereupon release the person from any further detention.

(1991 Code, § 37.06)

§ 37.18 CONDITIONAL CITATION.

Notwithstanding any other provisions of this chapter, whenever any enforcement provision of this code stipulates that a person cited for violation of the enforcement provision is allowed some definite period of time to correct the violation and comply with the enforcement provision before being subject to any penalty; or the person cited for the violation is entitled to an administrative appeal or investigatory hearing before any administrative officer, board, or similar entity to determine whether the citation is valid and justified; then the citation or a written notice attached thereto shall, as the case may be, state the period of time permitted for compliance or the procedure to be followed to exercise the right to the administrative appeal or investigatory hearing, and the person shall not be required to execute a notice to appear in court, nor shall the complaint be filed with the Clerk of the Court, nor shall the time period permitted for compromise and settlement of the complaint under § 37.24(A) of this chapter commence until, as appropriate:

(A) The time period allowed for compliance has elapsed, and it is found that the person has not complied;

(B) The person has waived the right to administrative appeal or investigatory hearing, or has failed to invoke and exercise that right within any applicable time period; or

(C) The administrative appeal proceeding or investigatory hearing has been conducted and has affirmed the citation.

(1991 Code, § 37.07)

§ 37.19 WARNING INSTEAD OF CITATION.

Notwithstanding the provisions of § 37.02 of this chapter, if any enforcement officer has cause to believe that a person has violated or is violating an enforcement provision of this code, but also has cause to believe that the person is of law-abiding character and has not knowingly, wantonly, or repeatedly violated the provision, and the violation is a minor violation not posing imminent jeopardy to life, limb, property, or the public welfare, the enforcement officer, at his or her discretion, may issue a warning instead of an official citation. The warning shall inform the person that he or she is in violation of an enforcement provision and the enforcement officer shall order the person to forthwith cease or correct

the violation. At the discretion of the enforcement officer, the warning may be either an informal verbal warning or a formal written warning. A formal written warning shall be issued on the same form ordinarily used for an official citation of the offense committed, but all copies thereof shall be clearly marked "Warning Only." Issuance of a warning shall not require the offender to pay any fine or compromise and settlement, nor to appear in court. However, if a formal written warning is issued, a copy shall be kept on file for at least one year in the office of the Clerk-Treasurer and the office of the enforcement officer. The issuance of a warning shall in no way bar the subsequent issuance of an official citation for the same offense if it should later be determined that the offender in fact did knowingly or wantonly violate the enforcement provision, is a repeat offender, or has failed to comply with the warning order.

(1991 Code, § 37.08)

§ 37.20 STATUTE OF LIMITATIONS ON ISSUING A CITATION.

Pursuant to the provisions of I.C. 34-4-32-1(c)(2), no citation for the violation of any enforcement provision of this code shall be issued and served if more than two years have elapsed since the alleged violation has occurred.

(1991 Code, § 37.09)

§ 37.21 FORM OF CITATION AND SUMMONS FOR TRAFFIC AND OTHER OFFENSES.

The form of citation and summons used for an ordinance violation shall be in accordance with this section, as appropriate to the nature of the violation.

(A) *Traffic offenses.* In all cases where a citation is issued and served for the violation of an ordinance constituting a moving traffic offense or a non-moving traffic offense required by law or regulation to be reported to the Indiana Commissioner of Motor Vehicles, the form of complaint and summons prescribed by I.C. 9-30-3-6(b) shall be used for the purpose of issuing the citation; provided, however, that the enforcement officer shall clearly indicate in the space provided on the form that the violation charged is a violation of a town ordinance and not of state law, and provided further that in that section of the form dealing with "Court Action and Other Orders," and in that subsection thereof concerning the finding of the court, the enforcement officer shall delete the word "state" and substitute the word "town" so that the form shall read "Judgement for the Town" rather than "Judgement for the State," in the event that the form has not been already so modified and preprinted.

(B) *Other offenses.* In all other cases where a citation is issued and served for violation of an enforcement provision of this code, and in accordance with I.C. 34-4-32-1(e), the form of complaint and summons prescribed by I.C. 9-4-7-4(b) may be used for the purpose of issuing the citation, subject to the same stipulations and modifications as when the form is used for a traffic offense as described above. However, if the traffic citation form is not deemed suitable and convenient for use with respect to any other enforcement provision, the chief officer of the department or other agency responsible for enforcement may prescribe an alternative form of complaint and summons to be used for issuing the citation; provided that any alternative form of complaint and summons shall consist of at least four

copies, as required for the administration of § 37.22 of this chapter, and that the form shall be examined

and approved by the Town Attorney, who shall ascertain that it is of proper legal form and satisfies all necessities for judicial processing in accordance with the rules and regulations of the court for the filing of ordinance violation complaints, and that it meets all administrative requirements as stipulated in this chapter or in the particular enforcement provision to which it pertains.

(1991 Code, § 37.10)

§ 37.22 ADMINISTRATIVE PROCEDURE ON ISSUING CITATION.

(A) Whenever a citation is issued for violation of any enforcement provision of this code, the enforcement officer issuing the citation shall provide one copy thereof to the offender, including or accompanied by the notices as prescribed in ‘§ 37.18 and 37.24 of this chapter, as appropriate, shall retain one copy for the records of his or her own department or agency, and as soon after issuance as possible shall deliver all other copies to the town Clerk-Treasurer for the purpose of administering the further provisions of this section. The Clerk-Treasurer shall examine each citation so received and shall determine from the records available whether or not the person charged with the violation has previously been convicted of, or has admitted guilt to, a violation of the same provision or of a substantially similar provision of any ordinance of the town in effect prior to the implementation of this code, and shall note this information on the citation for the information of the court, and shall accordingly fix or adjust, as may be necessary, the amount of fine to be requested in the complaint, pursuant to I.C. 34-4-32-4(e)(1) and in accordance with § 37.23 of this chapter, if the amount has not been previously determined accurately and entered in the citation by the enforcement officer issuing the same.

(B) The amount of fine so determined shall be entered on the complaint form by the enforcement officer or by the Clerk-Treasurer in the space provided, if any, or else shall be clearly noted and firmly attached to the copies of the complaint to be filed with the court and kept by the Clerk-Treasurer. Thereupon:

(1) If the violation cited in the complaint is a violation of any enforcement provision other than a moving traffic offense or a non-moving traffic offense required by law or regulation to be reported to the Indiana Commissioner of Motor Vehicles, the Clerk-Treasurer shall retain the citation for the period of time allowed for the offender to compromise and settle the complaint as provided by § 37.24(A) of this chapter; and if the complaint is not compromised and settled within the period of time, the Clerk-Treasurer shall as soon as possible thereafter tender the complaint for prosecution in accordance with § 37.25 of this chapter; or

(2) If the violation cited in the complaint is a violation of an enforcement provision constituting a moving traffic offense required by law or regulation to be reported to the Indiana Commissioner of Motor Vehicles, the Clerk-Treasurer shall forthwith tender the complaint for filing with the court in accordance with § 37.25 of this chapter.

(1991 Code, § 37.11)

§ 37.23 PROCEDURE FOR DETERMINING FINE.

(A) (1) When an enforcement officer issues and serves a citation, other than a warning citation, for the violation of any enforcement provision, he or she shall, if practicable, determine from the records available the status of the person under this section and shall determine and fix a fine to be requested in accordance with the provisions of this section, and shall enter the amount of the fine on the copy of the citation given to the offender, or on a written attachment thereto, and also on all other copies of the citation.

(2) However, if it is not practicable for the enforcement officer to check the available records at the time, or if doing so would require detaining the person cited for an unreasonable period of time, the enforcement officer may inquire of the person being cited if he or she has previously been convicted or has admitted guilt to the same offense being charged (exclusive of similar offenses committed in other jurisdictions), and the enforcement officer may rely on the response of the person for the purpose of this section until the time as the available records can be consulted by the enforcement officer or by the Clerk-Treasurer pursuant to § 37.22; however, should it subsequently prove that the person has given the enforcement officer inaccurate information as to his or her previous convictions or admissions of guilt, the enforcement officer or the Clerk-Treasurer shall adjust the fine requested to accord with the provisions of this section, and the Clerk-Treasurer shall mail to the offender written notice of the adjustment.

(B) The amount of fine to be requested in the complaint shall be determined in the following manner. If any provision of this code establishes a fixed penalty for violation of the provision or of a related provision, then the amount of fine requested in the complaint shall be the fixed amount so specified; however, if no fixed amount is specified, but a minimum and maximum penalty are provided, then:

(1) If the violation is a first offense against the provision, the fine requested in the complaint shall be the minimum penalty so established or \$1, whichever is greater;

(2) If the violation is a second offense in violation of the same provision, then the fine requested in the complaint shall be the minimum penalty so established plus 50% of the difference between the maximum penalty provided for violation of the provision and the minimum penalty; or

(3) If the violation is a third or subsequent offense in violation of the same provision, then the fine requested in the complaint shall be the maximum penalty provided for violation of the provision.

(C) However, should any person commit two or more separate offenses against any one enforcement provision by virtue of any singular and substantially simultaneous act or circumstance, and the singular and simultaneous act or circumstance is the person's first or second instance of committing any offense against the particular provision, then each separate offense shall be severally treated as a first offense or as a second offense, as the case may be, for purposes of fixing a requested fine for each offense in accordance with this section, irrespective of the other offenses concurrently committed.

(1991 Code, § 37.12)

§ 37.24 SETTLEMENT OF COMPLAINT WITHOUT TRIAL.

Any person who has been cited for violation of any enforcement provision of this code, whether or not having signed a notice to appear in court, shall have a right to compromise and settle the complaint without trial or appearance in court, in accordance with the following procedures.

(A) If the offense cited is other than a moving or non-moving traffic offense of the kind described in § 37.22(A) of this chapter, the offender may compromise and settle the complaint in accordance with the provisions of the following notice, which shall be imprinted on or attached to the copy of the citation provided to the person cited:

“You have a right to appear in court at the place and time indicated, either in person or by attorney, to answer and be tried in the cause of the violation cited in the complaint and summons. However, if you do not wish to appear in court and be tried, you may settle the complaint by either delivering during regular business hours or mailing your copy of the citation and payment of the stipulated fine to: Office of the Clerk-Treasurer, Town of Rome City, Box 338, Rome City, Indiana 46784. The amount of fine owing depends on the nature of the violation, and may depend on whether or not you have previously been convicted or have admitted guilt to the same offense, and is determined in accordance with § 37.23 of the Rome City Municipal Code, a copy of which is available for public inspection at the Office of the Clerk-Treasurer. If the amount of fine was not determined at the time the citation was served, this information may be obtained by contacting the Office of the Clerk-Treasurer. Payment of the fine must be received within five days, exclusive of weekends and legal holidays, following the date of issuance and service of the citation; after such time, the complaint will have been filed with the Clerk of the Court for docketing and trial. If paying in person, payment may be made in cash, traveler’s checks, money order, or certified check; if paying by mail, please remit only a money order or certified check payable to the Town of Rome City in the exact amount of the fine. Settlement of the complaint and payment of the fine according to this procedure constitutes a waiver of trial and an admission of guilt having the same effect as an adverse judgement of a court; however, no fees or costs in addition to the fine will be assessed, whereas if you choose to appear in court and are convicted, substantial fees and court costs will be assessed by the court in addition to the fine imposed. Settlement of the complaint in this manner also discharges your obligation under any notice to appear in court which you may have signed, and if you were required to deposit any security as bond for appearance, such security will be returned to you.”

(B) (1) If the offense cited is a moving or non-moving traffic offense of the kind described in § 37.22(B) of this chapter, the offender may compromise and settle the complaint in the manner prescribed by I.C. 34-4-32-5, and the following notice and compromise execution form, or a substantially similar notice and form serving the same purpose as may be prescribed by the court or other competent authority, shall be imprinted on or attached to the copy of the citation provided to the person cited:

“You have a right to appear in court at the place and time indicated to answer and be tried in the cause of the traffic ordinance violation described in the citation. Unless the court subsequently orders and notifies you to make a personal appearance pursuant to I.C. 9-30-25(g), you may make

such appearance either in person or by attorney or, alternatively, if you do not wish to appear in court and be tried you may instead of such appearance and in accordance with I.C. 34-4-32-5(e) settle the complaint any time prior to the date of the scheduled court appearance by delivering or mailing your copy of the citation and this notice, with a signed admission of guilt as provided below and as required by law, accompanied by payment in the total amount of fine, fees, and costs owing as hereafter indicated, to: Clerk of the Noble County Court, 101 North Orange Street, Albion, Indiana 46701. If paying in person, payment may be made in cash, traveler’s checks, money order, or certified check; if paying by mail, please send only a money order or certified check in the exact amount of fine and fees owing; money orders or checks should be made payable to the Clerk of the Noble County Court. Please be advised that signature of the admission of guilt and payment of the fine and costs constitutes a waiver of trial and has the same effect as an adverse judgment of the Court were you to appear and be tried, and that the Indiana Commissioner of Motor Vehicles (and the equivalent authority of the state in which your driver’s license was issued if you are not an Indiana resident) will be notified of your admission of guilt to the violation. Settlement of the complaint in the manner set forth in this notice discharges your obligation under any notice to appear in court which you may have signed, and if you have been required to deposit any security as bond for appearance, such security will be returned to you.”

STATEMENT OF FINE AND COSTS

Town of Rome City Traffic Citation No.

Name/Address of Person to Whom Issued

-

Offense Committed

-

FINE (amount prescribed by Rome City Traffic Code) \$ _____

STATE DOCKET FEE (I.C. 33-10.5-8-8(1)) _____

COUNTY DOCKET FEE (I.C. 33-10.5-8-8(2)) _____

MUNICIPAL PROSECUTOR’S FEE (I.C. 33-10.5-8-8(3)) _____

MOTOR VEHICLE FEE (I.C. 4-14-1-8) _____

JUDICIAL FEE (I.C. 33-10.5-8-8(7)) _____

TOTAL FINE AND COSTS OWING _____

ADMISSION OF GUILT

I the undersigned do hereby admit to having committed the offense described and stipulated in the attached traffic citation:

(sign full name)

(2) The Clerk of the Court shall, every month, pay to the town Clerk-Treasurer the amount of fines and fees owing to the town and so collected by the Clerk, in the same manner as other judgments of the court entered in favor of the town for the violation of its ordinances, as stipulated by § 37.27 and by law.

(1991 Code, § 37.13)

Editor's note:

I.C. 33-10.5 was repealed by P.L. 98-2004

§ 37.25 FILING AND PROSECUTION OF COMPLAINT.

When a citation has been issued for violation of an enforcement provision of this code and the violation is a traffic offense as described in § 37.22(B), or is some other kind of offense and the time period allowed for compromise and settlement of the complaint as provided by § 37.24(A) and § 37.18 has elapsed, the Clerk-Treasurer shall deliver a copy of the complaint and summons to the Town Attorney, who shall file the complaint in the name of the town with the Clerk of the Noble County Court or other court of competent jurisdiction, and prosecute the complaint in accordance with I.C. 34-4-32-1(b) and applicable rules of the court. However, the Town Attorney may prescribe a different procedure for filing the complaint with respect to any class of violation if he or she deems an alternative procedure more suitable and expedient.

(1991 Code, § 37.14)

§ 37.26 APPEARANCES FOR THE DEFENDANT AND THE TOWN.

(A) Unless the court, pursuant to I.C. 9-30-2-5(g) or other applicable law, orders otherwise, the defendant in the trial for violation of an enforcement provision may appear in person or by attorney, and an appearance by attorney satisfies any notice to appear signed by the defendant. Appearance on behalf of the town may be made by the Town Attorney personally or, with his or her consent and approval, any of the following persons shall be competent to appear for and represent the town:

(1) Another attorney retained by the Town Attorney for that purpose, or who is retained as counsel by any board, commission, or similar authority responsible for the enforcement of the enforcement provision;

(2) The enforcement officer originally issuing the citation for the violation;

(3) The chief executive or other chief officer of the department or other agency responsible for the enforcement; or

(4) A member of the Town Council.

(B) However, if any person described in divisions (A)(2), (A)(3), or (A)(4) above is designated to appear for the town, the Town Attorney, as necessary, shall advise the person on the procedures of the court and the evidence it will be necessary to present in order to sustain the charge of the violation.

(1991 Code, § 37.15)

§ 37.27 PAYMENT OF FINES, COSTS, AND PROSECUTOR'S FEES.

Whenever a court enters judgment in favor of the town in the trial of an ordinance violation complaint, the court shall fine the violator in an amount not exceeding the penalty requested by the town in the complaint. However, the judge of the court shall have discretion to impose a lesser fine than that requested if, in the judgment of the court, there exist extenuating or mitigating circumstances warranting a lesser penalty; but if the judgment is entered by the Clerk of the Court upon waiver of trial and admission of guilt by the defendant, the Clerk does not have discretion to impose a lesser penalty, unless so ordered by the judge. The court shall also tax and assess as part of the judgment in favor of the town any fees and costs which are recoverable pursuant to state law. In accordance with the provisions of I.C. 33-32-1-3, the Clerk of the Court shall, each month, pay to the Clerk-Treasurer of the town all fines, costs, and fees, and the Clerk-Treasurer shall allocate and deposit the monies in accordance with § 37.30.

(1991 Code, § 37.16)

§ 37.28 RECORDS OF CONVICTION OR COMPROMISE.

Whenever any person is charged with the violation of an enforcement provision and either compromises and settles the complaint pursuant to § 37.24, or is found guilty by a court in accordance with § 37.27, the Clerk-Treasurer shall make and keep a record of the compromise or conviction, organized for reference by the name of the offender and according to any other means of identification which the Clerk-Treasurer deems dispensable for the purpose of administering § 37.23 of this chapter. The record constitutes presumptive evidence of guilt of any violation, whether or not the offender has made any admission to a violation for purposes of fixing a fine pursuant to § 37.23, and no offender shall be permitted to plead for a lesser fine than any subsequently requested on the advent of a repeat violation on the grounds that he or she was not, in fact, guilty of any prior offense which he or she has compromised or of which he or she has had judgment entered against him or her by a court.

(1991 Code, § 37.17)

§ 37.29 FURTHER OR COLLATERAL ACTIONS.

(A) The compromise and settlement of a complaint for the violation of any enforcement provision of this code pursuant to § 37.24 of this chapter, or an action upon the complaint initiated and prosecuted pursuant to § 37.25, and any fines, fees, or costs imposed and collected in connection therewith are in consequence of the penal violation of the respective enforcement provision per se, and the compromise and settlement of any complaint, or a judgment of a court in favor of the town pursuant to the sections of this chapter, shall not be construed to settle nor bar the town from initiating and pursuing any or all of the following further or collateral civil actions:

(1) An action to recover costs incurred by the town to bring any property or the use thereof into compliance with an enforcement provision pursuant to I.C. 36-1-6-2;

(2) An action seeking a civil injunction against a violator to ensure current or future enforcement of and compliance with any enforcement provision pursuant to I.C. 36-1-6-4;

(3) An action to recover damages to town property or any other pecuniary loss to the town arising out of the violation of any enforcement provision; and/or

(4) An action to recover stipulated costs incurred by the town in any action described in divisions (A)(1), (A)(2), or (A)(3) above, including, but not limited to, any fees paid by the town in any action pursuant to state law.

(B) It shall be the duty of the Town Attorney, if so instructed by the Town Council, to initiate and prosecute any further actions as the case may warrant.
(1991 Code, § 37.18)

§ 37.30 ALLOCATION AND DEPOSIT OF FINES, FEES, AND COSTS.

When the Clerk-Treasurer, for violation of an enforcement provision, receives payment of any fines, fees, or costs pursuant to §§ 37.24, 37.27, 37.29(A)(1), or 37.29(A)(4) of this chapter; or possesses on behalf of the town any forfeited security deposit as undischarged bond for appearance pursuant to § 37.17(B)(1) or (C)(1) of this chapter; or receives payment of recovered damages or loss pursuant to § 37.29(A)(3) of this chapter; and, to the extent that any payment does not escheat to an insurance company which has previously made compensatory payment to the town, the monies or property so received shall be administered and allocated by the Clerk-Treasurer in accordance with the following provisions of this section.

(A) In the case of monies paid as fines for penal violations of any enforcement provisions, the monies shall be deposited in the General Fund of the town, unless the particular enforcement provision stipulates that any fines be deposited in some other designated fund. However, if, during any fiscal year, the total amount of fines collected and deposited in the General Fund as of any date should exceed the total amount estimated to be receipted into the General Fund during that fiscal year from collection of

finances at the time the General Fund budget for the fiscal year was approved and certified, the Town Council may adopt a resolution which stipulates that any further receipts, or any part or proportion thereof, be allocated and deposited in any other fund or funds as follows:

(1) To any debt service fund to retire or pay principal and interest on any general obligation indebtedness of the town;

(2) To any self-insurance fund which may now or hereafter be established for the town, if the Town Council shall deem that there exists a substantial risk of liability not adequately indemnified by the monies otherwise provided for or on deposit in the fund;

(3) To any pension, retirement, or employee benefit fund which may now or hereafter be established for the officers or employees of the town, to the extent that the Town Council may deem on an actuarial basis that there exist or may exist unfunded or inadequately funded obligations of the fund in consideration of the monies otherwise provided for or on deposit in the fund;

(4) To any other fund from which appropriations have been made for the fiscal year, but the appropriations cannot be expended due to a shortfall of other revenues estimated and anticipated to be received into the fund during the fiscal year, to the extent necessary to make up any shortfall; or

(5) To any other fund to the extent necessary to augment the monies on deposit or anticipated to be received during the remainder of the fiscal year, for the purpose of funding an additional appropriation which the Town Council desires to make from the fund.

(B) In the case of any forfeited security deposit, the Clerk-Treasurer shall record the complaint as having been compromised and settled upon taking possession thereof, and shall make disposition of the possessed security as provided in this division.

(1) If the deposit has been made and forfeited pursuant to § 37.17 (C)(1) of this chapter and the security is a deposit of cash or a directly depositable cash instrument, which includes a traveler's check or certified check, then the Clerk-Treasurer shall allocate and deposit the possessed security as though it were an ordinary payment of the fine owing, in the same manner as provided in division (A) above, and notwithstanding the fact that the cash value of the security deposit may exceed the amount of fine originally requested in the complaint;

(2) If the security deposit is a negotiable instrument, which includes a bond, note, or debenture, having a convertible cash value but which is not directly depositable, the Clerk-Treasurer shall proceed to convert the instrument, or may sell the instrument on the securities market for the price as it will bring, and the net proceeds from the conversion or sale after deduction of any applicable sale commissions or transaction fees shall be allocated and deposited as though they were an ordinary payment of the fine owing, in the same manner as provided in division (A) above, and notwithstanding the fact that the net proceeds may exceed the amount of fine originally requested in the complaint; provided further, however, that if the security is an investment instrument of the kind which it is lawful for the town to own and hold as an investment of public funds pursuant to I.C. 5-139 or any other law

authorizing the investment of public funds, and the Clerk-Treasurer shall determine that it would be of greater financial advantage and benefit to the town, the Clerk-Treasurer may keep the security as an investment asset of the town instead of converting or selling the security, and the principal amount thereof shall be allocated and credited to the appropriate fund or funds to which a cash receipt would be allocated and deposited pursuant to division (A) above, and the interest or other earnings therefrom shall be allocated and deposited in the fund or funds as would ordinarily be the case for other town investments; or

(3) If the security deposit is any other valuable personal or real property, the Clerk-Treasurer shall provide for the same to be offered for sale as surplus property of the town in accordance with the provisions of I.C. 36-1-11, and the net proceeds of the sale after deduction of the costs of conducting the sale shall be allocated and deposited as though they were an ordinary payment of the fine owing in the same manner as provided in division (A) above, and notwithstanding the fact that the net proceeds of the sale may exceed the amount of fine originally requested in the complaint.

(C) In the case of a payment of stipulated costs recovered pursuant to §§ 37.27, 37.29(A)(1), or 37.29(A)(4) of this chapter, the payments shall be allocated and deposited to the fund or funds from which the stipulated costs themselves were originally paid or obligated.

(D) In case of a payment for recovery of damage or loss occasioned by the violation of an enforcement provision pursuant to § 37.29(A)(3) of this chapter, any payment shall be proportionally allocated to the fund or funds from which:

(1) Payment will or has been made to repair or replace the damaged property, or to the General Fund if the property will not be repaired or replaced; or

(2) Any other pecuniary loss has occurred, has or will be debited, or from which the loss has or will be made up, if the specific fund or funds are identifiable; and if not, to the General Fund. (1991 Code, § 37.19)

§ 37.31 CIVIL PENALTY SCHEDULE.

(A) Violation of the following sections of this code of ordinances may be processed through the Town Municipal Violations Bureau and shall carry the following civil penalties.

<i>Code Section</i>	<i>Penalty</i>
§ 50.100	\$25
§ 51.99	\$25
§ 70.03	\$25
§ 70.04	\$25

Code Section