

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

**PETITION OF THE CITY OF NEW ALBANY,)
INDIANA FOR APPROVAL OF A)
REGULATORY ORDINANCE FOR SANITARY)
SEWAGE SERVICE COVERING)
UNINCORPORATED AREAS OF FLOYD)
COUNTY, INDIANA)**

CAUSE NO. 44860

PETITION

Pursuant to Indiana Code § 8-1.5-6-9, the City of New Albany, Indiana (“New Albany”) petitions the Commission to approve a regulatory ordinance for sanitary sewage service covering unincorporated areas of Floyd County, Indiana. In support of its Petition, New Albany states:

1. New Albany is a municipality which owns and operates plant and equipment for the collection and treatment of sanitary sewage pursuant to Indiana Code ch. 36-9-23. New Albany provides sanitary sewage service to the public throughout the corporate limits of New Albany and to various customers outside the corporate limits.

2. On or about April 8, 2014, New Albany adopted Ordinance No. G-14-06 establishing regulation pursuant to Indiana Code §§ 36-9-2-16 and -18 of sanitary sewage service throughout New Albany and throughout the area within four (4) miles surrounding the corporate limits of New Albany, but not including the areas agreed upon with the Town of Georgetown, Indiana in the “Georgetown-New Albany Agreed Sewer Regulatory Boundary Map” (the “Wastewater Service Area”). A copy of said Ordinance is attached hereto as Exhibit A. While the Ordinance purports to extend four (4) miles from the corporate limits in all directions, its application is limited to Floyd County pursuant to Ind. Code § 36-1-3-9(c)(2).

3. Other than New Albany, the only other municipalities located in Floyd County are the Towns of Georgetown and Greenville. The former is a party to the territorial agreement embodied in Ordinance No. G-14-06. The latter operates a very small treatment plant, and it is not expected that it would be affected by the Ordinance. There are also a number of entities possessing certificates of territorial authority (CTAs) to provide sewer service in Floyd County which have not been revoked. With various consolidations that have occurred, it is unknown how many of these entities continue to function as stand-alone entities. Those CTAs have been issued to Aqua Indiana, Inc. ("Aqua"); Wastewater One, LLC; Wymberly Sanitary Works, Inc.; Deerwood Environmental, Inc.; The Reynolds Group, Inc; M.E.K.A., Inc. ("MEKA"); and Canyonlands Homeowners, Inc. New Albany has caused a copy of this Petition to be mailed to the Towns of Georgetown and Greenville. MEKA has been administratively dissolved by the Indiana Secretary of State. Besides MEKA and Aqua, New Albany has caused to be mailed a copy of this Petition to the CTA holders to the addresses as maintained by the Secretary of State. A copy has been mailed and sent via electronic mail to counsel of record for Aqua in Cause No. 44772.

4. Aqua is seeking a certificate of territorial authority permitting it to provide wastewater utility service within a portion of Greenville and Lafayette Townships in Floyd County, Indiana, in Cause No. 44772 (the "Proposed CTA Area"). It is believed that the Wastewater Service Area will impact the Proposed CTA Area.

5. Since the Ordinance was adopted, New Albany and Georgetown have honored its terms and no further CTAs have been granted in the area. New Albany only learned of the need for Commission approval upon Aqua's request filed in Cause No. 44772.

6. New Albany is a “municipal utility”; the Ordinance is a “regulatory ordinance”; and the territory outside the City of New Albany and covered by the Ordinance is a “regulated territory” as those terms are defined in Indiana Code § 8-1.5-6-1 through 3.

7. A map of the Wastewater Service Area covered by the Regulatory Ordinance is attached to the Ordinance. New Albany proposes to continue charging its existing rates and charges for its service to be provided in the territory until such time as said rates are lawfully changed. A schedule of said rates is attached hereto as Exhibit B. There are no administrative or judicial proceedings involving the Regulatory Ordinance.

8. New Albany considers Indiana Code § 8-1.5-6-9 to be relevant to the subject matter of this proceeding.

9. New Albany is represented by counsel as reflected below, and requests service of all petitions, motions, reports, testimony, exhibits, or objections of any kind to be served upon New Albany’s counsel of record:

Nicholas K. Kile, Attorney No. 15203-53
Hillary J. Close, Attorney No. 25104-49
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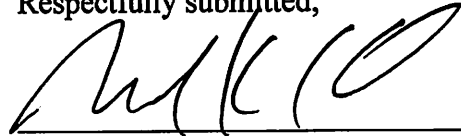
WHEREFORE, New Albany respectfully requests the Commission conduct an evidentiary hearing and thereafter issue an order:

(1) Approving the regulatory ordinance;

(2) Granting all other relief appropriate in the premises.

Dated this 30th day of September 2016.

Respectfully submitted,



Nicholas K. Kile, Attorney No. 15203-53

Hillary J. Close, Attorney No. 25104-49

Lauren M. Box, Attorney No. 32521-49

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Attorney for Petitioner


City of New Albany, Indiana

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served this 30th day of September, 2016 by electronic mail upon the following counsel of record:

Aqua Indiana, Inc.
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Nicholas K. Kile

ORDINANCE NO. G-14-06

AN ORDINANCE ESTABLISHING EXCLUSIVE JURISDICTION TO PROVIDE SEWER SERVICE WITHIN REGULATED TERRITORY

Declaration of Purpose

WHEREAS, the City of New Albany owns, operates, and maintains, sewer lines, lift stations and plant under a Certificate of Territorial Authority ("CTA") to provided service for the citizens of New Albany and various customers outside the corporate boundary limits.

WHEREAS, upon recommendation of the Sewer Utility based upon recent Indiana Court of Appeals ruling it is proper to establish exclusive jurisdiction to service the area and boundary within four (4) miles outside the corporate boundaries ("regulated territory"), as permitted by State Code, that it not be serviced by a Certificate of Territorial Authority ("CTA") from the State of Indiana, and specifically recognizing the territory's agreed upon in the "Georgetown-New Albany Agreed Sewer Regulatory Boundary Map" with the Town of Georgetown (attached hereto).

WHEREAS, Indiana Code 36-9-2-18 specifically grants a municipality the power to exercise such rights in the regulated territory upon establishing and passing of an ordinance.

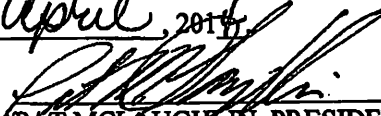
WHEREAS, the City of New Albany Sewer Utility is servicing individuals already within the new proposed regulated territory.

WHEREAS, the passing of this ordinance will give clear guidance and boundaries for customers and providers of sewer services in the regulated territory without the need for future litigation; and will limit the unrestrained ability of other entities and/or utilities to build sewer plants and provide sewer services in the regulated territory.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF NEW ALBANY, INDIANA: That Section 51.007 is added to the City Code of Ordinances and shall read as follows:

That the City of New Albany under Indiana Code 36-9-2 et. seq. (as may be amended) and specifically under 36-9-2-16, 17, and 18 (as may be amended), establishes a regulated territory for exclusive sewer service and jurisdiction over the area four (4) miles outside the corporate boundaries, except as outlined in the "Georgetown-New Albany Agreed Sewer Regulatory Boundary Map" with the Town of Georgetown (attached hereto and incorporated by reference herein), moreover exempting those other facilities that have a Certificate of Territorial Authority ("CTA") which have been duly authorized by the State of Indiana and its agencies. When development

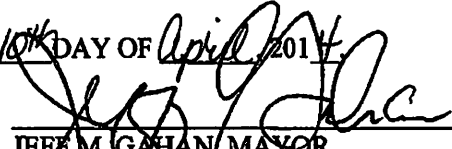
occurs within the City of New Albany's area of the "Georgetown-New Albany Agreed Sewer Regulatory Boundary Map" and the developer or potential customer provides financial documentation, which compares the cost of connecting to the Town of Georgetown and the City of New Albany, the City of New Albany may release and permit the connection to the Town of Georgetown when it is more economically feasible to do so after examining the costs and options available.

ADOPTED THIS 7th DAY OF April, 2014.

PAT MCLAUGHLIN, PRESIDENT
COMMON COUNCIL, NEW ALBANY

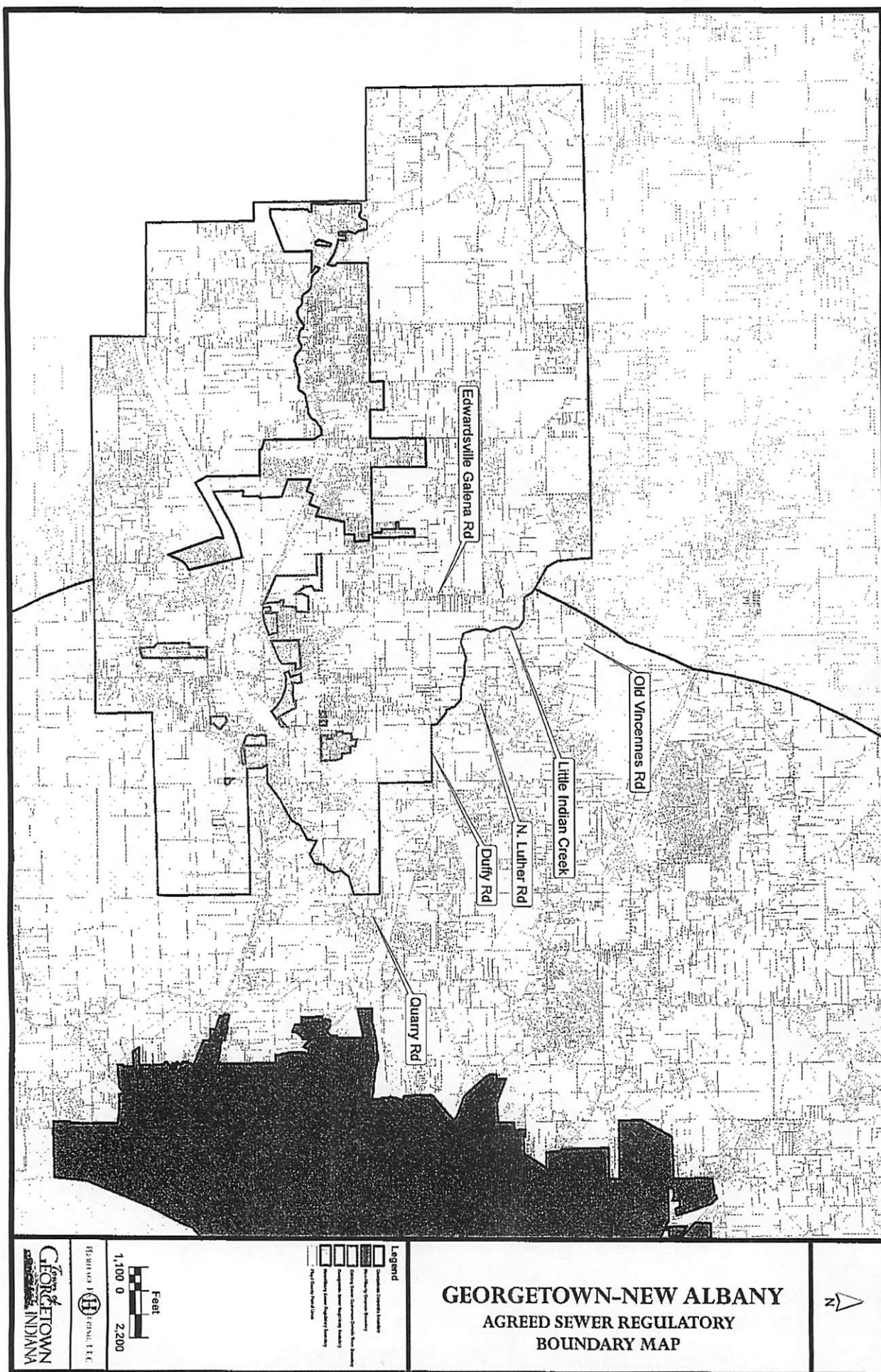
ATTEST: Vicki Glotzbach
VICKI GLOTZBACH, CITY CLERK

PRESENTED BY ME TO THE MAYOR THIS 8th DAY OF April, 2014.
TIME: 10:00 a.m.

Vicki Glotzbach
VICKI GLOTZBACH, CITY CLERK

ACCEPTED AND APPROVED THIS 10th DAY OF April, 2014.

JEFF M. GAHAN, MAYOR
CITY OF NEW ALBANY, INDIANA

ATTEST: Vicki Glotzbach
VICKI GLOTZBACH, CITY CLERK



RATES AND CHARGES

§ 51.100 COLLECTION OF RATES AND CHARGES; BOARD TO ESTABLISH BYLAWS.

The rates and charges established by this subchapter shall be collected by the city. The Sewage Works Board shall make and enforce the bylaws and regulations as may be deemed necessary for the safe, economical and efficient management of the city's sewerage system, regulator chambers and pumping stations and sewage treatment plant, for the construction and use of house sewers and connections to the sewerage system and for the regulation and collection of the rates and charges.

(Ord. G-76-598, passed 3-1-1976; Ord. G-95-223, passed 7-20-1995)

§ 51.101 ESTABLISHMENT OF RATES.

For the use of and service rendered by the sewage works, rates and charges shall be collected from the owners of each and every lot, parcel of real estate or building that is connected with the city's sanitary sewerage system or otherwise discharges sanitary sewage, industrial wastes, water or other liquids either directly or indirectly into the sanitary sewerage system of the city, which rates and charges shall be payable as hereinafter provided and shall be in an amount determinable as follows:

(A) Except as herein otherwise provided, the sewage rates and charges shall be based on the quantity of water used on or in the property or premises subject to the rates and charges, as the same is measured by the water meter there in use, and shown by the consumption records of the water utility serving the city and its inhabitants. Sewage service bills shall be rendered once each month (or period equaling a month).

(B) Monthly flow charge, unmetered charge per month and wholesale flow charge:

	<i>Phase I</i>	<i>Phase II</i>
Monthly Flow Charge		
Flow charge per 100 cubic feet	\$6.20	\$7.46
Minimum charge (200 cubic feet)	\$12.40	\$14.92
Unmetered Charge per Month (700 cubic feet)		
Residential dwelling inside the city limits	\$43.40	\$52.22
Residential dwelling outside the city limits	\$65.10 ¹	\$78.33
Wholesale Flow Charge		
Flow charge per 1,000 gallons Town of Georgetown	\$3.83 ²	\$4.60
Excess Strength Surcharge		

BOD and/or TSS	\$0.33	\$0.33
TSS	\$0.33	\$0.33
Oil and grease	\$0.33	\$0.33
Debt Service Surcharge		
Residents of Jacqueline Estates, Winchester Estates, and Shagbark Estates	\$30	\$30
¹ Users outside the city limits are charged based on their monthly usage plus a 50% surcharge. ² This section shall not otherwise amend the provisions of the city's contract with the Town of Georgetown.		

(C) (1) The Phase I rates shall become effective April 13, 2010, and shall be applied thereafter, beginning with the next billing cycle of the sewage works.

(2) The Phase II rates shall become effective on January 1, 2012, and shall be applied thereafter, beginning with the next billing cycle following the date.

(D) In the event a lot, parcel or real estate or building discharges sanitary sewage, industrial waste, water or other liquid into the city sanitary sewer system, either directly or indirectly, and uses water in excess of 10,000 cubic feet per month and it can be shown to the satisfaction of the city that a portion of the water as measured by the water meter or meters does not and cannot enter the sanitary sewer system, then the owner or other interested party shall install and maintain meters, weirs, volumetric measuring devices or any adequate and approved method of measurement acceptable to the city for the determination of wastewater discharge.

(E) In the event two or more dwelling units such as trailers, apartments or housekeeping rooms discharging sanitary sewage, water or other liquids into the city's sanitary sewerage system, either directly or indirectly, are users of water, and quantity of water is measured by a single water meter, then in such case billing shall be for a single service in the manner set out elsewhere herein. A **DWELLING UNIT** shall be interpreted as a room or rooms or other living space or spaces in which cooking facilities are provided.

(F) In the event a lot, parcel of real estate or buildings discharging sanitary sewage, industrial wastes, water or other liquids into the city's sanitary sewerage system, either directly or indirectly, is not a user of water supplied by the water utility serving the city, the owner or other interested party shall be charged according to the following criteria:

(1) Residential dwellings inside the city limits will be charged \$32.69 per month; based on 700 cubic feet consumption.

(2) A nonresidential sewer user that discharges less than 6,000 cubic feet per month as estimated by the city shall be charged according to the rate schedule herein provided as applied to an estimate of the wastewater discharge approved by the city.

(3) Sewer users that discharge in excess of 6,000 cubic feet per month as estimated by the city will be required to install a city approved method of flow measurement and will be billed according to the measured flow and the rate schedule herein provided.

(4) Residential dwellings outside the city limits will be charged \$49.03 per month; based on 700 cubic feet consumption.

(5) Residents outside the city limits using both city water and city sewers will be charged their monthly usage plus a 50% surcharge.

(G) In order that the rates and charges may be justly and equitably adjusted to the service rendered, the city shall have the right to base its charges not only on volume but also on the strength and character of the sewage and wastes which it is required to treat and dispose of. The city shall have the right to measure and determine the strength and content of all sewage and wastes discharged, either directly or indirectly, into the city's sanitary sewerage system, in such manner and by such method as it may deem practicable in the light of the conditions and attending circumstances of the case, in order to determine the proper charge.

(1) Normal domestic wastewater strength should not exceed:

- (a) Five-day biochemical oxygen demand (BOD): 225 milligrams per liter;
- (b) Suspended solids (SS): 225 milligrams per liter;
- (c) Oil and grease: 100 milligrams per liter; and
- (d) Chemical oxygen demand (COD): 225 milligrams per liter.

(2) Normal domestic wastewater strength should not exceed the following:

Five-day biochemical oxygen demand (BOD)	225 milligrams per liter
Suspended solids	225 milligrams per liter
Oil and grease (O&G)	100 milligrams per liter
Chemical oxygen demand (COD)	325 milligrams per liter

(a) There shall be an excessive strength surcharge of \$.33 per pound for the following parameters in excess of the limitation.

BOD and/or COD	\$.33 per pound
O & G	\$.33 per pound
SS	\$.33 per pound

(b) One pound of pollutant shall be its concentration in mg/l x discharge flow (usage) in million gallons x 8.34 (lbs./gallon).

(H) Any and all garbage collection fees and recycling fees shall be considered as and incorporated in the sewer rates and charges for purposes of billing and collection.

(I) The rates and charges shall be billed by the city and shall be collected in the manner provided by law and ordinance. The first billing may be for a period of more or less than one full month in order to make the monthly collection period correspond with the water meter readings of the water utility serving the city, depending upon the date on which the rates established by this chapter become effective.

(J) The rates and charges may be billed to the tenant or tenants occupying the properties served, unless otherwise requested in writing by the owners, but the billings shall in no way relieve the owner from liability in the event payment is not made as herein required. The owners of the properties served, which are occupied by tenants, shall have the right to examine the collection records of the city for the purpose of determining whether such rates and charges have been paid by the tenants; provided that, the examination shall be made at the office at which the records are kept and during the hours that the office is open for business.

(K) Where a metered water supply is used for fire protection as well as for other uses, the city may, in its discretion, make adjustments in the minimum charge and in the use charge as may be equitable.

(L) The New Albany Sewer Board is granted authority to hear, determine and grant temporary waivers of sewer use charges on new and unoccupied residential construction under the following circumstances and conditions:

(1) The New Albany Sewer Board shall prepare and adopt a form for the application;

(2) The owner of any property on which such new single-family residential construction is planned shall make written application for waiver of sewer use charges to the New Albany Sewer Board on such form within 15 days after water service is first provided to the subject property;

(3) The New Albany Sewer Board may grant a waiver from the obligation to pay sewer use charges for the subject property for a period of three months subsequent to the date on which water service is first provided to the property. In the event that the waiver is granted, the New Albany Sewer Board shall cause the sewer bill for the property to be adjusted in a manner that will reflect a full credit for sewer and sanitation billing during the period for which the waiver is granted; and

(4) The New Albany Sewer Board shall further have the authority to extend such waiver on a month-to-month basis upon written request by the owner and provided that the property is not occupied, but the waiver shall not extend for a total period of more than six months. However, if in the fourth, fifth or sixth month's water usage is greater than the minimum billing usage, the Sewer Board shall not grant any additional waivers. If no timely written request for extension is received, the waiver shall lapse at the end of the then applicable waiver period and the property shall not be eligible for the granting of further waivers.

(Ord. G-76-598, passed 3-1-1976; Ord. G-90-209, passed 2-6-1990; Ord. G-91-255, passed 2-14-1991; Ord. G-93-147, passed 3-18-1993; Ord. G-98-240, passed 4-16-1998; Ord. G-98-287, passed 12-9-1998; Ord. G-02-13, passed 5-6-2002; Ord. G-03-37, passed 5-15-2003; Ord. G-06-29, passed 8-29-2006; Ord. G-10-13, passed 4-15-2010)