

ORDINANCE NO. 497

TOWN OF MIDDLEBURY COMPREHENSIVE PUBLIC WORKS, UTILITY, AND
DEVELOPMENTAL STANDARDS ORDINANCE

WHEREAS Indiana Code § 36-1-3-1 et seq. permit any unit in the State of Indiana to exercise any power or to perform any function necessary to the public interest in the context of its governmental or internal affairs, which is not prohibited by the Constitution of the United States or of the State of Indiana, or denied or pre-empted by any other law, or is not expressly granted by any other law to another governmental entity;

WHEREAS the Town Council of the Town of Middlebury is the Town legislative body and is by law authorized to adopt ordinances and resolutions governing its public works, utility, and developmental functions;

WHEREAS the Middlebury Public Works Superintendent, Middlebury Wastewater Superintendent, Middlebury Water Superintendent, and Middlebury Town Manager have reviewed and recommended the adoption and establishment of the standards contained in this Ordinance;

NOW, THEREFORE, BE IT HEREBY ESTABLISHED, ORDERED, ADOPTED, AND ORDAINED by the Town Council of the Town of Middlebury, Indiana as follows:

1. TOWN STANDARDS. The Town of Middlebury Standard Specification and Development Guide attached hereto as Exhibit A is hereby incorporated by reference and adopted and established for the Town of Middlebury, Indiana. The Town of Middlebury Standard Specification and Development Guide shall govern all public work and utility projects of the Town of Middlebury, Indiana as well as all private projects to be dedicated to the Town of Middlebury, Indiana and those connecting with or affecting water utility facilities, wastewater utility facilities, park facilities, roads and streets, buildings, and other facilities of the Town of Middlebury, Indiana. For purposes of this Ordinance, the Town of Middlebury Standard Specification and Development Guide shall be hereinafter referred to as the "Guide." The Town Council of the Town of Middlebury, Indiana may revise the provisions contained in the Guide at any time upon the adoption of a duly enacted ordinance at a public meeting.

2. ELKHART COUNTY REFERENCES. Any and all references in the Elkhart County Highway Guidelines and Standards for Design and Public Improvement—"Street

Standards” (hereinafter referred to as the Elkhart County Street Standards) to the Board of Commissioners of the County of Elkhart, Indiana, the Board of County Commissioners, the Elkhart County Commissioners, the Elkhart County Planning Department, or similar designation shall, for purposes of the Guide, be altered to be and mean the Town Council of the Town of Middlebury, Indiana. Any and all references in said Elkhart County Street Standards to the Elkhart County Highway Engineering Department, Elkhart County Highway Department, Manager of Transportation, County Engineer, or similar designation shall, for purposes of the Guide, be altered to be and mean the Superintendent for the Department of Public Works for the Town of Middlebury, Indiana. Any and all references in said Elkhart County Street Standards to Elkhart County or similar designation shall, for purposes of the Guide, be altered to be and mean the Town of Middlebury, Indiana. Any and all references in said Elkhart County Street Standards to Elkhart County design, County design, or similar designation shall, for purposes of the Guide, be altered to be and mean Town of Middlebury design. Any and all references in said Elkhart County Street Standards to the County Highway System, County Roads, or similar designation shall, for purposes of the Guide, be altered to be and mean the Town of Middlebury Road and Street System.

3. GUARANTEE AND MAINTENANCE AGREEMENT. In addition to the surety requirements of the Elkhart County Street Standards, the following standards and obligations apply:

- A. The developer or developers involved with a dedicated Residential roadway or dedicated Industrial roadway shall, in addition to the posting of such security, enter into a “Guarantee” agreement with the Town Council of Middlebury, promising to complete the roadway or roadways in question within an agreed period of time. Said agreement shall incorporate the surety amount or amounts under the formula aforesaid, and the developer, together with all additional personal guarantors as shall be required by the County Plan Commission, its staff, the Town Council of Middlebury, or the Middlebury Town Attorney, shall be and remain personally responsible for the completion of said roadways, pursuant to said “Guarantee,” above and beyond the amount of surety actually posted. The form of such “Guarantee” shall be adopted by the Town Council of Middlebury and the Middlebury Town Attorney, and may be revised from time to time hereafter without amendment of this Ordinance.

- B. The developer or developers involved with an accepted Residential roadway or accepted Industrial roadway shall, as a condition to such acceptance, and in addition to the maintenance bond, certificate of deposit, or letter of credit aforescribed, enter into a "Maintenance Agreement," together with all additional personal guarantors as shall be required by the County Plan Commission, its staff, the Town Council of Middlebury, or the Middlebury Town Attorney, all of whom shall be personally responsible for the full and complete maintenance of the dedicated roadway for said three (3) year period of time from and after the date of its acceptance by the Town Council of Middlebury, and irrespective of the amount of the maintenance bond, certificate of deposit, or letter of credit posted as surety for such maintenance obligation. The form of such Maintenance Agreement shall be adopted by the Town Council of Middlebury and the Middlebury Town Attorney, and may be revised from time to time hereafter without amendment of this Ordinance.

4. ACCEPTANCE OF DEDICATED PROJECTS AND CONSTRUCTED STREETS. No dedicated project or constructed street shall be accepted by the Town of Middlebury until the developer/builder thereof has complied with the terms and conditions of the Guide, the Elkhart County Street Standards, and any and all other legal standards arising from the Elkhart County Zoning Ordinance, Elkhart County Subdivision Ordinance, or other applicable law.

At a minimum, to secure acceptance by the Town of Middlebury, the developer/builder must have performed or completed the following:

- A. The right-of-way for any street at issue must have been properly dedicated to the Town Council of Middlebury, with appropriate right-of-way width.
- B. If a subdivision is involved, the developer/builder must have secured both primary and secondary approval of the plat for the subdivision, which would include any roadway at issue.
- C. The final plat, as approved by the Plan Commission (to include, if applicable, acceptance of the right-of-way for the roadway by the Town Council of Middlebury) must be properly filed and recorded in the Elkhart County Recorder's and Auditor's Offices.
- D. The naming of any roadway in question must have been properly completed, and the necessary street signs ordered and installed.

- E. All inspections contemplated by the Guide and the Elkhart County Street Standards must have been undertaken and completed, and final approval by the Town of Middlebury Superintendent of Public Works must be at hand.
- F. All drainage arrangements or systems contemplated by the Guide, the Elkhart County Street Standards, the plat of the subdivision, and applicable Indiana law shall be completed by the developer/builder.
- G. The maintenance bond contemplated by the "Guide" must be in appropriate form and on file with the Town Council of Middlebury. The amount of the maintenance bond shall be equal to ten percent (10%) of the contract price for the items to be dedicated to the Town of Middlebury and shall be effective for a period of three (3) years from the date of acceptance.
- H. All pavement and paving required or contemplated by the Guide, the Elkhart County Street Standards, and the plat of the subdivision in question, to include, where applicable, acceleration/deceleration lanes or passing blisters, must be completed, and approved as part of the final inspection by the Town of Middlebury Superintendent of Public Works.
- I. A written request for the acceptance must be filed with the Town Council of Middlebury; as part of such written request, the builder/developer must certify, under oath, that each of the requirements herein stated have been completed.
- J. A written certification executed by a professional engineer licensed pursuant to Indiana Code §25-31 et seq. must be filed with the Town Council of Middlebury certifying that construction review and inspection services have been performed and that the street or project in question, including any drainage or utilities, have been designed, constructed, and tested in accordance with the requirements of the Guide.

5. CROSS CONNECTION CONTROL AND BACKFLOW PREVENTION.

A. The regulations located at 327 IAC 8-10 et seq. entitled "Cross Connections; Control; Operation," as amended or replaced from time to time as promulgated by the Indiana Department of Environmental Management and 675 IAC 16-1.3 et seq. entitled "Indiana Plumbing Code, 1999 Edition," as amended or replaced from time to time as promulgated by the Indiana Fire Prevention and Building Safety Commission are hereby incorporated and adopted by reference as part of this Ordinance. One copy of these regulations shall be on file with the Town of Middlebury Water Utility.

B. That the Town of Middlebury Water Utility may cause inspections to be made of all properties served by the public water system. The frequency of inspections and reinspections shall be based on potential health hazards involved and shall be as established by the Town of Middlebury Water Utility.

C. That upon presentation of credentials, a representative of the Town of Middlebury Water Utility shall have the right to request entry at any reasonable time into or upon any property served by a connection to the public water system of the Town of Middlebury in order to inspect connections. On request, the owner, lessee, or occupant of any property shall furnish to the inspector any pertinent information regarding the connections, piping systems, water systems, and hazards on such property. It shall be assumed that a cross connection and hazard is present if access or requested information are refused.

D. That the Town of Middlebury Water Utility is hereby authorized and directed to discontinue water service to any property wherein any connection in violation of this Ordinance exists, and to take such other precautionary measures deemed necessary to eliminate any danger of contamination of the public water system. Water service shall be discontinued only after then (10) days' written notice is served on the owner, lessee, or occupants of the property or premises where a violation is found or suspected to exist. Water service to such property shall not be restored until the violation(s) have been eliminated in compliance with the provisions of this Ordinance.

E. That, if it is deemed by the Town of Middlebury Water Utility Superintendent that an emergency endangers public health, safety, or welfare and requires immediate action, and a written finding to that effect is filed with the Clerk of the Town of Middlebury and delivered to the user's premises, water service may be immediately discontinued. The user shall have an opportunity for hearing before the Town Council of the Town of Middlebury, or its designated hearing officer, of such emergency discontinuance.

F. As a condition of new or continued water service, an approved reduced-pressure-principle backflow preventer shall be installed and maintained by the user in the principal water line servicing each connection to the Town of Middlebury water system. In the discretion of the Town of Middlebury Water Utility Superintendent, a double-check valve backflow preventer may be used in lieu of a reduced-pressure-principle backflow preventer. In

the event the Town of Middlebury Water Utility Superintendent determines that an increased risk or hazard exists to the Town of Middlebury water system at a connection where a double-check valve backflow preventer was originally allowed to be utilized pursuant to this section, the Town of Middlebury Water Utility Superintendent may require the replacement of the double-check valve backflow preventer with a reduced-pressure-principle backflow preventer.

G. The backflow preventer used must be an approved assembly as found on the List of Approved Backflow Prevention Assemblies published by the University of Southern California Foundation for Cross Connection Control and Hydraulic Research, which list is available for inspection at the Town of Middlebury Water Utility. The backflow preventer must be installed in an easily accessible location not subject to flooding or freezing.

H. As a condition of continued service, all users shall arrange for the inspection of all cross connection and backflow preventer control assemblies by an inspector registered by the Indiana Department of Environmental Management. These inspections shall occur at time intervals specified in 327 IAC 8-10-8(b), as amended, or as otherwise required by any applicable statute, regulation, or ordinance. Completed test reports shall be submitted to the Town of Middlebury Water Utility by the user within thirty (30) days after the user's receipt of the test reports. Tests and inspections may be required on a more frequent basis at the discretion of the Town of Middlebury Water Utility Superintendent.

I. That this Ordinance does not supersede the Indiana Plumbing Code as amended or replaced from time to time or any plumbing ordinances, sewer use ordinances, or other ordinances currently in force and effect in the Town of Middlebury, but rather is supplementary to such. In the event of any conflict with this Ordinance, the requirements which are stricter and more protective of the public health and safety shall control.

6. WATER TURN ON AND SHUTOFF PROCEDURES.

A. Other than by persons authorized by the Town of Middlebury, no one shall turn on or shall turn off Town of Middlebury mains, hydrants, gate valves, curb stop valves, or other valves of the Town of Middlebury Water Utility. No person shall maliciously, willfully, or negligently break, damage, uncover, or deface, or tamper with any structure, appurtenance, or equipment which is part of the Town of Middlebury Water Works. Any person violating this provision shall be subject to immediate arrest.

B. Each month, the Middlebury Water Utility shall generate a customer balance sheet showing the amount owed per customer, not including the amount owed from the most recent billing.

C. Accounts showing a balance of over Fifty Dollars (\$50.00) without a payment to the water utility in the previous thirty (30) days shall receive a letter from the Middlebury Water Utility which states the total amount owing, the amount of the last payment, and which requests payment. Such customers will also receive from the Middlebury Water Utility a "Statement of Intent to Pay" allowing the customer to arrange for payment of past due balances.

D. If within the thirty (30) days following the mailing of the letter described in Subsection C above, the Statement of Intent to Pay is not returned to the water utility, but payment is made, the water utility shall send a letter requesting that the Statement of Intent to Pay be returned to the water utility and requesting that payments continue.

E. When any account or statement for services provided by the Town of Middlebury Water Utility is sixty (60) days past due, the water utility may send a letter demanding payment within ten (10) working days and stating that the water service may be terminated if all delinquent payments are not made within the ten (10) days.

F. If payment is not received within the ten (10) working days described in Subsection E above, the Town of Middlebury Water Utility may terminate water service to the customer. Water service shall not be restored until the customer pays the past due amounts and the customer makes satisfactory arrangements with the Town of Middlebury Water Utility to avoid future delinquencies. In order to re-commence water service after termination, the customer shall pay to the Town of Middlebury Water Utility a re-instatement fee of Fifty Dollars (\$50.00).

7. WATER METERS.

A. To confirm and ratify historic policy of the Town of Middlebury Water Utility, water meters shall be initially provided by the user at the user's expense. All water meters used shall meet the requirements of and be subject to the approval by the Town of Middlebury Water Utility Superintendent.

B. To confirm and ratify historic policy of the Town of Middlebury Water Utility, the repair and/or replacement of water meters for water lines of one inch (1") or less in size shall be provided by the Town of Middlebury at its expense; the repair and/or replacement of water meters for water lines greater than one inch (1") in size shall be provided by the user at the user's expense.

8. FIRE PROTECTION AND WATER CONNECTIONS. Any fire protection system utilizing water from the Town of Middlebury Water Utility shall have its own tap and be connected to a Town of Middlebury water line separate and apart from any other water tap or connection to the Town of Middlebury water system.

9. AUTHORITY OF SUPERINTENDENT.

A. In the event of unforeseen circumstances or developments or emergency situations, the Superintendent of the Town of Middlebury Water Utility is hereby vested with such authority and discretion as is needed in order to protect the public health, safety, and welfare in connection with the operation of the Town of Middlebury Water Utility.

B. A person shall not institute, permit, or maintain any conditions that may jeopardize or threaten the public health and safety with respect to the Town of Middlebury water system. The Superintendent, upon hearing of the existence of such conditions, shall order the abatement of those conditions. The order must be in writing, specify the conditions that may jeopardize or threaten the public health and safety, and name the shortest reasonable time for abatement. If a person refuses or neglects to obey an order issued under this provision by the Superintendent, the Town of Middlebury attorney may, upon receiving the information from the Superintendent, institute proceedings in the courts for enforcement. An order may be enforced by injunction. If the action involves a criminal offense, a law enforcement authority with jurisdiction over the location where the offense occurred shall be so notified for further enforcement.

10. PRIORITY OF GOVERNING STANDARDS. Within the Guide, the following standards are established for the Town of Middlebury: Indiana State Laws and Regulations; Elkhart County Street Standards; Elkhart County Subdivision Control Ordinance; INDOT Standard Specifications; American Association of State Highway and Transportation Officials (AASHTO) Standards; the "Ten States Standards;" and the American Water Works

Association Standards. In the event of any conflict or inconsistency between these various standards, the controlling standard or requirement shall be established and determined by reference to and priority shall be given in the following order:

1. Indiana State Laws and Regulations.
2. Town of Middlebury Standards contained within the Guide.
3. Elkhart County Street Standards.
4. Elkhart County Subdivision Control Ordinance.
5. INDOT Standard Specifications.
6. AASHTO Standards.
7. Ten States Standards.
8. American Water Works Association Standards.

With reference to these standards, the latest edition of the published standard or specification shall be the governing edition.

11. DEVIATIONS FROM THE GUIDE. Any deviations or variations from the standards, specifications, and requirements of the Guide shall be permitted only with the prior written approval of the respective Superintendent of the Town of Middlebury with jurisdiction of the project or area in question.

12. SIGN ORDINANCE. The provisions in Section 8.8 of the Guide with respect to the Town of Middlebury Sign Ordinance are provided only for information and guidance purposes. The controlling requirements shall be those contained within the Town of Middlebury Sign Ordinance in effect and as amended from time to time.

13. PRIOR ORDINANCES. Upon the effective date of this Ordinance, Ordinance No. 289-A, 289-B, 289-C, 368, 368-A, 368-B, and 368-C shall thereby be repealed and rendered of no further force nor effect. The express repeal by this Ordinance of these prior Ordinances does not affect any rights or liabilities accrued, penalties incurred, proceedings begun, or projects for which the plans and specifications have been approved by the Town of Middlebury prior to the effective date of this Ordinance. These rights, liabilities, other proceedings, and projects are continued and penalties shall be imposed and enforced under the repealed ordinances as if this Ordinance had not been adopted.

14. ENFORCEMENT.


A. Any person violating this Ordinance shall be guilty of an ordinance violation and on conviction thereof shall be fined in an amount not exceeding Two Thousand Five Hundred Dollars (\$2,500.00) for each such violation. Each day in which any violation shall continue shall be deemed a separate offense under this Section. For any continuing violation, the Town of Middlebury shall also be entitled to an injunction against the violator for the actions involved. If the violation involves the Town of Middlebury water system, the injunction may also include a shut-off order allowing the Town of Middlebury to shut-off the violator's supply of municipal water from the Town of Middlebury Water Utility until all violations cease and are corrected.

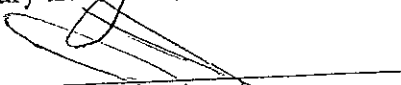
B. Any person violating any of the provisions of this Ordinance shall be liable to the Town of Middlebury for any expense, loss, or damage suffered by the Town of Middlebury by reason of such violation, including but not limited to, the costs and expenses of locating the source of the violation, repairing any damage caused by the violation, attorney fees, court costs, engineering fees, administrative time and expense, labor, and all other costs associated with enforcement and compliance with this Ordinance.

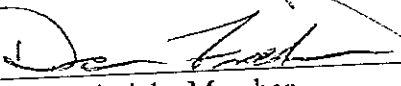
15. EFFECTIVE DATE. This Ordinance shall be effective October 1, 2007 and shall govern all projects for which the plans and specifications have not been approved by the Town of Middlebury prior to that date.

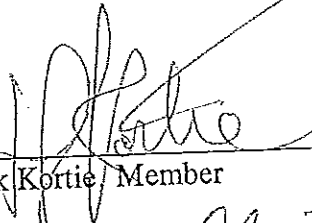
IN WITNESS WHEREOF, the Town Council of the Town of Middlebury, Indiana has adopted this Ordinance the 17th day of September, 2007.

TOWN COUNCIL OF THE TOWN OF
MIDDLEBURY, INDIANA


By: 
Gary L. O'Dell, President

By: 
Dan Shoup, Vice-President

By: 
Dan Frederick, Member

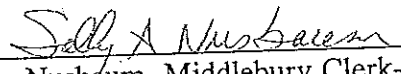
By: 

Jack Kortie, Member

By: 

Jon Ottinger, Member

ATTEST:


Sally A. Nusbaum, Middlebury Clerk-Treasurer

ORDINANCE NO. 497-A

AN ORDINANCE AMENDING THE TOWN OF MIDDLEBURY COMPREHENSIVE PUBLIC WORKS, UTILITY, AND DEVELOPMENTAL STANDARDS ORDINANCE

WHEREAS Indiana Code Sections 36-1-3 et seq. permit any town in the State of Indiana to exercise any power or perform any function necessary to the public interest in the context of its municipal or internal affairs, which is not prohibited by the Constitution of the United States or of the State of Indiana, or denied or pre-empted by any other law, or is not expressly granted by any other law to another governmental entity;

WHEREAS the Town Council of the Town of Middlebury, Indiana is the Town legislative body and is by law authorized to adopt ordinances and resolutions governing its public works, utility, and developmental functions;

WHEREAS the Town Council of the Town of Middlebury adopted Ordinance No. 497 entitled the "Town of Middlebury Comprehensive Public Works, Utility, and Developmental Standards Ordinance" on September 17, 2007;

WHEREAS the Middlebury Water Superintendent and Middlebury Town Manager have reviewed and recommended the amendment of Ordinance No. 497 in accordance with the terms and provisions contained herein to address water shutoff procedures;

NOW, THEREFORE, BE IT HEREBY ESTABLISHED, ORDERED, ADOPTED, AND ORDAINED by the Town Council of the Town of Middlebury, Indiana as follows:

1. Amendment of Cross Connection Control and Backflow Prevention Provisions. Paragraphs 5(D) and 5(E) of Ordinance No. 497 are hereby rescinded and replaced with the following provisions:

D. That the Town of Middlebury Water Utility is hereby authorized and directed to discontinue water service to any property wherein any connection in violation of this Ordinance exists, and to take such other precautionary measures deemed necessary to eliminate any danger of contamination of the public water system. Water service shall be discontinued ten (10) working days after the date of notice to the customer on the account stating that the water service will be discontinued if any connection in violation of this Ordinance is not corrected within the ten (10) working days. The notice shall also state that if a customer wishes to appeal or believes the proposed

discontinuance of water service is in error or is otherwise improper, the customer may file a formal written request prior to the expiration of the aforementioned ten (10) working day period for a hearing in front of the Middlebury Town Council. The formal request must be hand-delivered or sent to the Middlebury Town Clerk at the address provided in the notice and must be received by the Clerk no later than 4:00 p.m. on the tenth working day after the date of the notice. If the foregoing procedures are timely initiated by the customer, the water service will not be discontinued pending a final decision by the Middlebury Town Council. The Middlebury Town Council shall thereafter establish the date, time, and place of the hearing and send a notice to the address provided by the customer at least ten (10) days in advance of the scheduled hearing date. The decision of the Middlebury Town Council at the hearing shall be final. If discontinued, water service to such property shall not be restored until the violation(s) has been eliminated in compliance with the provisions of this Ordinance.

E. That, if it is deemed by the Town of Middlebury Water Utility Superintendent, that an emergency endangers public health, safety, or welfare and requires immediate action, and a written finding to that effect is filed with the Clerk of the Town of Middlebury and delivered to the customer's premises, water service may be immediately discontinued. The customer shall have an opportunity for a hearing before the Middlebury Town Council of such emergency discontinuance promptly upon written request by the customer.

2. Amendment of Water Turn-On and Shut-Off Procedures. Paragraphs 6(E) and 6(F) of Ordinance No. 497 are hereby rescinded and replaced with the following provisions:

E. When any account or statement for services provided by the Town of Middlebury Water Utility is sixty (60) days past due, the Water Utility may send a notice to the customer on the account demanding payment within ten (10) working days of the date of the notice and stating that the water service may be terminated if all delinquent payments are not made within the ten (10) working days. The notice demanding payment shall also state that if a customer wishes to appeal or believes the proposed termination of water service is in error or is otherwise improper, the customer may file a formal written request prior to the expiration of the aforementioned ten (10) working day

period for a hearing in front of the Middlebury Town Council. The formal request must be hand-delivered or sent to the Middlebury Town Clerk at the address provided in the notice and must be received by the Clerk no later than 4:00 p.m. on the tenth working day after the date of the notice. If the foregoing procedures are timely initiated by the customer, the water service will not be disconnected pending a final decision by the Middlebury Town Council. The Middlebury Town Council shall thereafter establish the date, time, and place of the hearing and send a notice to the address provided by the customer at least ten (10) days in advance of the scheduled hearing date. The decision of the Middlebury Town Council at the hearing shall be final.

F. If payment is not received and no formal request for a hearing is received by the Middlebury Town Clerk within the ten (10) working days provided in Subsection (E) above, the Town of Middlebury Water Utility may terminate water service to the customer. Water service shall not be restored until the customer pays the past due amounts and the customer makes satisfactory arrangements with the Town of Middlebury Water Utility to avoid future delinquencies. In order to re-commence water service after termination, the customer shall pay to the Town of Middlebury Water Utility a reinstatement fee of Fifty Dollars (\$50.00).

3. Amendment of Provisions Regarding Water Meters. Ordinance No. 497 is hereby amended by adding the following Paragraph 7(C) as follows:

C. Beginning six (6) months after the effective date of this Ordinance, the owner of a multi-unit dwelling or facility (residential, commercial, industrial, or otherwise) shall be financially responsible for the municipal water and sanitary sewer service furnished to all units in the dwelling or facility unless each unit has a separate water meter and separate curb stop or water shut-off approved by the Middlebury Water Utility Superintendent. If a separate water meter and separate curb stop or water shut-off exists or is installed by the owner for each unit, the owner may have the utility service account placed in the name of the customer in each unit, subject to compliance with the Town of Middlebury's established utility customer account requirements.

4. Amendatory Effect. All other provisions of Ordinance No. 497 of the Town of Middlebury, Indiana shall remain in full force and effect.

5. Effective Date. This Ordinance shall be effective immediately upon its date of adoption.

ORDAINED AND ADOPTED this 4th day of September, 2012.

TOWN COUNCIL OF THE TOWN OF
MIDDLEBURY, INDIANA

By: Gary L. O'Dell
Gary L. O'Dell, President

ATTEST:

Peggy A. Hutchison
Peggy A. Hutchison, Middlebury Clerk-Treasurer