

REGULAR MEETING – MARION COMMON COUNCIL – JANUARY 2, 2019 – 7:00 P.M., CITY HALL

The Common Council of the City of Marion, Indiana met in regular session on Wednesday, the 2nd day of January, 2019 at the hour of 7:00 p.m. in the Council Chambers, City Hall.

Before the prayer was given, Council President Alan Miller asked for a moment of silence please. They had two career firefighters for the City of Marion die just a few hours within each other last week, the first being John Swain who much of his career was a ranking officer, the other one being Clifford Mowery who, again, was a career firefighter. So, really dedicated, respected city servants of the Marion fire service. So if they would just observe a minute of silence and then they will pray for their Council meeting.

On the call of the roll the following members were shown to be absent or present as follows:

Present: Luzadder, Homer, Smith, Cain, Henderson, Johnson, Batchelor and Miller.

Absent: Brunner.

Council President Miller told City Clerk Kathleen Kiley he believes he's correct, they do not have minutes prepared yet from the previous meeting to approve. Kiley said, no, due to the holiday. Miller stated, so they will defer those to the next meeting and they will have two sets of minutes to approve.

There were no committee reports given at tonight's meeting.

Mr. Miller said he would just repeat an announcement he made at the last Council meeting in December two weeks ago that they need to make an appointment to the Marion Utility Service Board which they are scheduled to do at the next meeting of the City Council. That would be the 15th of this month. It has to be a Democratic appointment. There is a political balance that has to be maintained on the Utility Board. He told the audience if they are interested in serving as a member of the Marion Utility Board, they need to get an application from Mrs. Kiley's office which is on the 2nd Floor of City Hall and it needs to be returned to her by a week from today so it can be on their agenda for the meeting on the 15th.

UNFINISHED BUSINESS

GENERAL ORDINANCE NO. 24-2018 2ND READING AND PUBLIC HEARING

The City Clerk read General Ordinance No. 24-2018 by title only. An Ordinance of the Common Council of the City of Marion, Indiana to repeal in its entirety Ordinance 9-2005 codified at Chapter 113 in the Code of Ordinances for the City of Marion, Indiana and to repeal that portion of Ordinance 39-1996 codified at Chapter 150.31 of the Code of Ordinances for the City of Marion, Indiana and adopting replacement language therefore in a new Chapter 154, Contractor Registration. Jerry Foustnight, Building Commissioner, congratulated Mr. Miller and Mrs. Cain on their appointments. He looks forward to working with them during this year. As they presented this ordinance to them at the last Council meeting, this would be General Ordinance No. 24-2018, this is an ordinance that they have taken and worked very hard on. This ordinance is an ordinance that will hopefully make contractors more responsible, making it a safer environment for those individuals that not only live in residents but also the commercial applications. What he'd like to do, he told Mr. Miller, if it would be possible is he'd like to go ahead and let those that's in favor or opposed to it go ahead and have their three minutes, four minutes, whatever they're going to allow and then at the very end, he'd like to come up and bring one of the members that helped compose this so that they can address some of the issues and answer any questions they have but they thought maybe, by letting other individuals come up here, maybe that would bring some questions they might have for them, if that would be possible. Council President Alan Miller said, very well. Mr. Foustnight asked permission to do that at the beginning of the meeting and he granted that. But before they begin the public hearing, what questions do Council members have, if any, for Mr. Foustnight that were unanswered or not raised two weeks ago? Councilman Henry Smith said he counted 30-some licenses a person has to have, different types of licenses in here. Is that correct? Foustnight said it depends on what category you're going to do. If you're an electrician, you would have to have a license for an electrician. If you're a plumber, you already have your state license through Indiana so that would be already approved. So, if you were a general contractor, you would

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have a license as a general contractor. Is that what he's talking about? Smith said, okay, yes, because, basically speaking, there's like on the front page.... Foustnight said, excuse him, can he go get his book? He forgot his book. It's right here. Mr. Miller said he might mention that Mr. Hunt is here this evening too should you have legal related problems. Foustnight told Mr. Smith, okay, he's got his copy. Smith said, okay, like on page 3, you have (A), (B), (C) and (D), those are licenses there. Foustnight said, right, you have your..... Smith said, and (inaudible) so that'd give you four, five licenses right there. And then in your sub-contractors in (E), he counted seven different types of licenses right in there. Is that correct? Foustnight asked, does he mean concerning the concrete, masonry, carpentry or frame, those? Smith stated, right, those are like different types of licenses. Foustnight said, like your carpentry would be under a general contractor because you would have to, if you're a general contractor, you would be doing construction work so that would be there. Roofing would be under general because you're a roofer. Mr. Smith said, okay, stop right there. Now go back to, where it has electrical.... Miller asked Smith, can he help them with page numbers? Smith said, okay, turn to number four then. Now, what if he's just working in concrete. Is there a license for that? Foustnight asked Smith, where is he at? Miller said, page four of the copy they have. Foustnight said, like for instance, concrete, if you're putting in footers, yes. Smith said, okay, that's one there. He's working in masonry there, is that a license for that? If he just wants to put in masonry, is that a license for that? A gentleman from the audience asked, if it's pleasing to the board, can he help answer the question? Miller told him, sure. Would he identify himself please? He said sure, he's Ty Leming (sp?) and he helped author a lot of this so he can help clear some of the..... Smith asked him, is he a contractor? Leming said he is employed by a contractor, yes. Smith said, okay, now he says he's employed by a contractor. Leming said, yes. Smith asked, okay, in what manner? Leming said, as in he works there. He doesn't own it, if that's what he means. Somebody else writes his paycheck. Smith said, okay, so in other words, he's a part of a business then. Leming said, correct. Smith said, okay, so basically speaking, he would call him because he is an employee of it and Leming told him, correct. Smith said, now, so he wouldn't have to have these licenses, would he? Leming answered, yes and that's one of a few of the things he wants to clean up. If we read through it, the license is not held by the contractor itself. Say Jerry Foustnight Construction, Jerry Foustnight Construction as a business does not hold the license. The license is held by an individual. That individual is employed by the contractor. Mr. Smith told Leming, okay, so in other words, you could be classified as a sub-contractor. Leming said, no, no, no. Smith asked, what's the difference (inaudible) sub-contractor if you're working for him then? Leming stated, because he's not, he doesn't hold a contract. He's an employee. Smith said, okay, but being an employee, he's saying that he needs the license. Leming said, yes, if we read through the language, there's a few things. The only different delineation in different licenses, it follows the International Code. It's a Regulatory Commission that manages the code adopted by the State of Indiana. It's the expectation that they, as contractors, are held to. It's his (Foustnight) job to enforce those regulations. There's a residential code book and there's a commercial code book. Within that, there are several things that are not covered in the code because the code doesn't consider them life safety or structural components. So it covers mechanical, electrical and plumbing systems and it covers structures. Part of the structures is concrete so the way it reads right now is a general contractor who does footing work or if he does framework..... Smith said, okay, stop right there then. So basically speaking, you need a license for masonry, is that correct? Leming said, that's correct. Smith stated, okay, that's all he wanted to know. Leming said, but the one license..... Smith said, for (c), do you need a license for that? Leming said, yes, but it's the same license. Smith said, okay, that's all he wanted to know. Leming said, it's not a different license, it's the same license. Smith told Leming, so you're saying the masonry and the carpenter are the same thing and so one license covers that? Leming answered, yes. Smith said, and one license covers (c)? Leming said, no, no. Smith stated, that's what he's asking. That's individual licenses. Leming said, no, it's one license covers all. For a general contractor, if you come back here, page 3 is where he's at, for anyone that's doing the work listed under (A) through (F) on page 4 fits into one of three categories. They either fit into category A as a general contractor licensee, they fit into category C or category E. The registration is already completed. That's a component of the Building Department itself. Smith asked, but it doesn't specify it, does it? Leming asked, it doesn't specify what, sir? Mr. Smith said, okay, that these here fits into that category. Leming said, it does. Smith asked, whereabouts? Mr. Leming said it does right here. If we read, under (E). Miller asked Leming, what page are you on? Leming stated, he's on page 3 still, sorry. It says any person, firm or corporation, including but not limited to the following enumerated trades. (A) through (F) enumerates those specific

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trades. Smith said, (inaudible) answered his question but under (D), it says Residential Contractor Superintendent Registration and it says any individual who engages or supervises the work of these residential contractors. It doesn't say anything about it and then it goes down here to (E) where it says Sub-Contractor Registration and then it has and listed all these individual or all these subtitles that a person has to have license for. Councilwoman Deb Cain asked, can she speak up? Miller said, let Mr. Smith.... Smith said, he wants them to answer the question. Cain said she wanted to just point out to look at the title of each section. One says license, one says registration. Smith said, means the same thing. Mr. Leming and Mr. Miller told Smith, no it doesn't. Leming said, the ordinance pertains, and that's where there's several confusions. Currently on the books, the City of Marion requires contractors to register. That is in place as is today. Smith said, but you can't register, not unless you have a license. Leming told Smith, if the ordinance is adopted, he is correct. But it's still two different things. It's kind of like having a registration to your car but you still have to have a driver's license. It's two different things. Smith said, okay, but he's going by just this here. In other words, you have to register and you can't register, not unless you have the license. Leming said, that's correct. Mr. Smith stated, okay, that's what he's going by, this here. So in other words, registration means license with it. Leming said, no, license is a prerequisite for registration. Smith said, okay, if he can't, if he doesn't have a license, he can't register. Is that correct? Leming asked, for the enumerated trades, yes. Smith stated, he means for this right here. Leming said, for the enumerated trades, that's correct. Smith said, okay, so that means each one of these have to have a license to go with it. Is that correct? Leming answered, no. Smith asked, well how can I register if I don't have a license? Leming replied, it's all the same license. They're not individualized licenses. All these items here are covered under the general contractor license. Mr. Miller said, let him see if he can help. He asked Mr. Leming, is he telling Mr. Smith that on page 4, concrete, masonry, carpentry and framework, roofing, demolition, and drywall are all one license? Leming responded, they're all covered by the same license, that's correct. It's just identifying the trades. The International Code Book does not cover items such as drywall. It's not listed in the code book, therefore, there's no registration for that. Smith said, but he has to have license to drywall, is that correct? Leming said, no. It's not, he means, he (Foustnight) doesn't regulate or enforce any, there's no code to adhere to when it comes to hanging drywall or painting or finishing drywall. The International Code Council never wrote a code for that. Smith said, okay, but on page 4, (a) through (f), do you need a license for any of those (a) through (f)? Leming replied, yes because those are regulated. Mr. Smith told Leming, okay, you got drywall down there as (f). Leming stated, no, he's sorry. If you read, so we're still talking about the sub-contractor component, correct? Smith told Leming, right and he said you needed a license for (a) through (f) and on (f) is drywall. Leming stated, so what this is talking about here, we're talking about sub-contractors so if he is the general contractor and he hires someone to hang his drywall, if we read right here on page 4, the City of Marion Building Department shall designate on the registration form issued to the licensee those activities in which the subsidiary contractor licensee shall engage. However, registration under this category is no way to be interpreted to include any person, firm or corporation who contracts and engages in any activity which is not directly related to the building, remodeling or repairing. So if he hires someone under him, if he has the license in his hands and he hires you, for instance, to help him with the drywall, this sub-contractor clause covers you as his sub. You don't have to go get a license separate from his. You work under his license because he holds the building permit so he's responsible for your work. Smith said, okay, that's one of the 20 in here but he's just talking about the ones, right now, that falls under (E) and (E) consists of (a) through (f). Leming said, if we're talking specifically on license, then he can list the licenses real quick, if it's acceptable to the board. We have a general contractor license, there's a residential contractor license. Then if you flip.... Smith said, hold it. What's the difference in a general and a general contractor superintendent's license? Leming replied, the general superintendent is a registration, it's not a license. Smith said, it's not a license. Leming said, no. Smith stated, okay but it's specified under (B) pertaining to it. Leming replied, yes because the superintendent is the person representing the license holder on that project. Smith asked, so it would have to have a license, is that correct? Leming said, no. Smith stated, but (inaudible), that would need to have a license. Leming told Smith, say that again, he's sorry. Smith said, it designates that it needs a license. Leming said, let him read through. He does not believe it does in Article (B). No, so all Article (B) does is identifies when we go to file a permit, we have to list the person that's going to be the competent individual on the project. That's what the superintendent registration is for. It doesn't list anything in Article (B) about a license. Smith said, it says all applications for registration, A.2 general contractor superintendent, shall be signed by the general contractor. Leming

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commented, that's correct. Smith told Leming, so, in other words, he's saying that the superintendent doesn't need one. Leming stated, no, they need to be registered but not licensed. That's the way it reads, all applicants for registration. Smith asked, well is the superintendent one step above a general contractor? It looks over the work, doesn't it? Mr. Leming stated, he's the foreman. Smith said, right, looks over the work. Leming said, that's correct. Mr. Smith said, okay, and they don't need a license if they're going to look over the work? Leming answered, no because they're representing the license holder in general. So, if he can come back, if it's acceptable, there's a general contractor license, there's a residential contractor license because it's two different code books. Flip to page 5, there's a commercial contractor license, there's a master electrical license for individuals wanting to do commercial work outside of a firm, there's a master residential license. These things are all identified in the International Code. We didn't create these. Then beyond that, there's a sign contractor license for folks that are putting electrified signs on buildings or billboards. We don't cover plumbing because that's already covered by the state. If we skip past that, then it gets into HVAC. Those are the areas that are identified as licenses today. Smith said, so in other words, if he was, just went out there in general and he was a carpenter, he wouldn't need a license. Is that what he's saying? Leming asked, by himself? Smith said, yes, everything pertaining to self. Leming told Smith, so if you, Henry Smith, wanted to go build a home, for instance. If you're not employed by someone else that employed a license holder, then yes, you would be required to be licensed. Smith said, okay, now, if he was a mason and he went out there and he's going to put in a footer and a foundation, he would need a license? Leming said, again, if he's working for himself, yes he would. Smith said, okay, if he's framing a house and he's starting, putting a footer up to the roof, he would need a license? Leming replied, again, if he's working by himself, yes he would. Smith stated, okay, and then if he's doing the roofing and all this, would he need a license then? Leming asked, for just roofing? Smith said, he's putting on a roof. Leming told Smith, if you are the guy doing all of those activities that he's listed, one license covers him for all of them. Smith told Leming, he's saying that, he doesn't know nothing about, he's putting on a roof and he doesn't know nothing about concrete but he said he does and he goes and puts this roof in, he wouldn't need a license? Leming said, if you're putting in the footing, if he's framing the walls and he's putting the roof on, the one license..... Smith told Leming, he said one license covers all seven of these here. Is that what he's saying? Leming asked Smith, where are you at sir? Smith replied, same page he's on. Cain said, he's on registration. Leming asked, are we back on page 4 again? Cain said, he's on sub-contractor registration. Leming told Smith, if he's working for himself, by himself, as he asked, he's not a sub-contractor. He's representing himself. Smith commented, right. Leming said, so yes, you wouldn't fit under that clause. Smith said, that's what he asked earlier. He needs seven licenses. Mr. Leming stated, no. Smith asked, one license does it all? Leming told him, yes sir. Smith said, so a contractor's license covers footers, covers (inaudible), bricks or whatever it is, framing it up and all that there. Leming told Smith, given the context of his question, he's asking about footings, he's asking about structural framing on a residence, and a roof. As the code is written, that would all fall under the residential book which is on page 3, Article (C), residential contractor's license. You, as an individual, that would not be employed, working under another contractor, you would want the (inaudible) license. Tom Hunt, Corporate Counsel for the city, told Mr. Smith he thinks he's mistaking registration for licensing and those seven categories he's referring to aren't licensing, they're registration. You get a license and if you take a look at some of those license paragraphs, they permit you to do certain things under the license but in order to be able to do those within the city, you have to register for those. In other words, one license will allow you to do all those things as long as you register. You don't need seven licenses, you need one license and you can register for different activities. Smith said, okay, so in other words, if he had a general license, that means it'll cover all seven of those items. Is that correct? Hunt replied, well yeah. Take a look at 154.01(A). It says that in the very last sentence, this license permits all construction activities permitted by 154.01(C) and 154.01(E) below. So you're allowed to do all of those things as long as you register but you only need the one license. Mr. Smith said, okay, if he registers then he's a contractor. How does he know that this person is capable of doing all those things? Hunt told Smith, you can check to make sure he's registered and licensed. Smith said, okay, registered as a general contractor? Hunt replied, no, you're licensed as a general contractor. That permits you to do the other things as long as you're registered and if you go out and ask for somebody to do roofing on your house, you can check here to find out first of all whether they're licensed and secondly whether they're registered. Smith said, and so, on the contractor's piece of paper or whatever it is, it's going to specify that he's entitled to do roofing on there, right? Hunt said, well he assumes some license would be

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generated. Smith said, all seven of these can be listed on that then. Hunt replied, he assumes but he doesn't know how they're going to do it. Mr. Foustnight stated, you wouldn't have to do that because once you take and you get your license as a general contractor, they know what that covers. And then to refer to the question that he had, maybe this will help him, he told Mr. Smith. He would say, if he's doing the work himself, how do they know that he knows what he is doing? Smith said, no, he's not talking about on his own property. He's talking about somebody else as a contractor going out and doing it for anyone or anything like that. Foustnight said, first they would have to pass a test but second is that's why we have an inspection division. If you put in a footer, they go out there and prior to him being allowed, for instance, to pour that footer, they make sure that the rebar is in, they make sure that it's within the code. Same way with the roofing or anything. That's what their inspection division does. They go out and inspect to make sure that it's to code because if it's not to code then they won't allow him to continue until he brings it to code or his contractor, whoever his contractor is or whatever. Smith said, okay, looking at (G), okay where you get under electrical and, okay, now, what if you have something that is overlaying, let's say like in (G) electrical, and you have more of a geothermal heat ducts. Okay? Now, who's responsible for that? One is electrical, the other one is plumber, another is a carpenter. Foustnight asked, what is he referring to? Smith said, (G) on page 4 that goes all the way over to page 5. Hunt asked, is he talking about Regional/National Account Contractor Registration? Smith said, that is correct. Hunt asked Smith, and his question is? Smith said, if he had geothermal, which is closed loop, who is responsible for that? You're going to need a plumber, you're going to need electrical and sometime you might need a carpenter. Who's entitled for that? Foustnight replied, again, if there's electrical involved, they'd have to take the testing for the electrical part. A plumber in the State of Indiana who takes his test so he's already approved. And as far as the carpenter, he would be under the general carpenter part. Smith said, so in other words, isn't that three different types of licenses there? Foustnight said, and he thinks as far as (G) on the Regional/National Account Contractor Registration, that, he doesn't think even pertains to the question he has. Smith said, well it's a part of it because it talks about sub-contractors. As he goes over and read all this here and then (G) on page 4 and then go back to (B), (B) on page 5, all those are interrelated whereabouts each one has something to do with the work per se. Foustnight said, the purpose of (G) is that some of your larger companies, for instance Meijer's or a big corporation, Texas Roadhouse, we just went through it with Texas Roadhouse, they send their, they have a company that comes around and builds that facility for them and that facility, they could make a dozen or whatever. But those individuals come around. The reason that was put in there is so that, as a contractor coming in, they wouldn't have to take that testing. They give these, they complete the application, they give the resumes, they tell us other projects they've done and everything. Smith said, but they're interrelated. Hunt asked, to what? Smith said, okay, all three of them. You go back to (B) on page 5, (G) on page 4 and (E). Hunt replied, actually they're not interrelated. (G) that he's referring to only applies to companies that come in and typically, as Jerry mentioned, this applies to a situation where a national firm will come in and want to build a chain restaurant and they bring their own contracting companies. That doesn't apply to somebody that works here in Marion. Smith asked, okay, how would you handle, on page 6, a geothermal and that deals with a carpenter, that deals with plumbing and that deals with electrical. Hunt told Smith, he's not sure where he's referring. Smith said, on page 6, the last (inaudible). Mr. Miller asked Smith, he's talking about sanitary plumbing registration including solar? Smith said, all those that have interworking among themselves because if you're talking about, he's talking about geothermal and which consists of a closed loop, that plumbers, electrical and carpenter all work together. That mainly is what can fit in that paragraph there. How is that handled? Hunt asked, how is that what? Smith said, what would you say about that there? About the closed loop and all that? Plumbing, the electric part, the plumbing part and the contractor's part, all of them need license or what? Mr. Leming said he can answer the question in regards to the geothermal, he doesn't understand the master license component, but he is correct. Currently today, the State of Indiana licenses plumbers. Why they selected plumbers..... Smith said he remembers when they did it. That was during, Ross Supply, when he was out there and he mentioned that the state, that was part of the plumbers' deal to control it, but anyhow, they passed a test and had to do it. So once he said "Henry, you didn't have to take the test", he left because he was there for himself. Every test he had, he was for himself. When he said you do work on your own property and you don't need the license, that's when he jumped up and left. But, he understands that part. Leming said, sure. So to answer his question, let's say he's going to hire to have geothermal put into his house. He would look to hire a contractor that employs a licensed plumber that's not licensed by the City of Marion, they're licensed by the

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state, as they just discussed, and would also employ a licensed electrician. Now one person can hold multiple licenses, but again, he wants to make sure they understand, the licenses are held by an individual, not by the company itself. So if he chooses to go get his residential contractor license, his residential electrical license and he chooses to go down to the state and get his plumbing license, that's a lot of tests to take but you're covering a lot of different (inaudible). Just because he's a good carpenter, because that's his craft, that's his trade today, doesn't make him a good electrician. They don't want him wiring a house. Smith said, that's the reason why he brought up those (inaudible) the first thing because you have all these topics in here and, basically speaking, how can one person cover all these topics with one license. And he's still asking the question, how can one person cover all these topics or all these headings with one license? Leming stated, so his comment is he doesn't know of anybody that would choose to seek all three but, if he's going to put a geothermal into his house, he would want to hire a contractor that employs a licensed plumber and a licensed electrician. Now if they don't have that licensed electrician that works for them, that's where, and he thinks this is where the confusion was before, that's where we come back to this subpart (E), they can choose to sub out the electrical component to a license holder. So if he doesn't have that guy on his staff today, he can go find one. But he is correct, the electrical work would have to be done by a licensed electrician and the plumbing work would have to be done by a state licensed plumber, that is correct. Smith stated, okay now, on examinations, it has here where it has to be approved, approval of (inaudible) examination on all these here parts on page, well it just has here it should be a standard form and everything. Then it gets down to what number qualifies and what number passes. Okay? That's up in the air. Leming asked, what page is he on? Smith said he's on page 8. Leming said he can speak to this one pretty clearly. So, and he doesn't want to step on Jerry's toes, and he'll start by saying he has taken the contractor's license himself. He holds a contractor's license today. Not his contractor but he himself. So no matter who he works for, he takes that with him. There is a standardized test that was mentioned last month, Prometrics. They are, so International Code Council is a body of folks that write the code. The code is adopted by local jurisdictions and/or states. Here in the State of Indiana, we have adopted Building Code 2012. That's where we are. So IBC 2012, that's what we are regulated and have to adhere to. Prometrics, kind of like SAT's, Prometrics has taken that information that the International Code Council wrote, they've created a test, they gave it back to the International Code Council and said "we think these are good questions to see if people have a good comprehension and understanding of what the regulatory code is". The International Code Council looked at that and said this is a great test and accredited that test. Personally, he likes the Prometrics test. Not because, he means, there's a few different places that are accredited but he likes it because one, we, as a Council or a city, are not generating their own questions. It's not subjective. It is managed and confirmed to be true and structured to the code itself. So if we were to say we want to head down this road and the testing site, the reason is different cities have different expectations so that license is good across the board. He can take his license and work in Chicago if he so chooses. Mr. Smith said, so that's a universal code question then? Leming replied, yeah, it's International Code. That is the regulatory code that we are held to. He means, that's what we're all supposed to build to. Whether it's residential or commercial, we all have to meet building code. The test, the Prometrics, different cities have different thresholds. He thinks Jerry had said 70% was something, he doesn't want to speak for him but was a threshold he felt was comfortable. It showed a good working knowledge. Prometrics has a test that you cannot get (inaudible) a 70%, they have a 75%, they have an 80%. He doesn't think it goes any higher than that. But it's whatever jurisdiction you're working in, if they set a higher threshold. Smith asked, so what is the threshold for Grant County then? Leming answered, right now there's none because we don't have an ordinance but he thinks Jerry's proposing 70%. Smith stated, so in other words, Grant County is the first one to initiate this under that code, is that correct? Leming said, as far as nationally, no. Smith said, no he means... Leming said, for Marion? For Marion, yes. Today in Marion and/or Grant County, because he said Grant County, you are not required to hold a license in electrical or a general contractor. It's registration only, in Grant County today. But the process of acquiring that registration is you go into the Building Department and you pay the fee and then you receive the card. But there is no back-check of knowledge, if you will. Smith said, okay now, who has, it says the Marion City Board of Works may suspend a license up to one year. Who has that power to suspend the license? Mr. Hunt said, the Board of Works. Smith asked, okay, why the Board of Works? Hunt replied, there has to be a body to take care of the suspension. It can't be arbitrary. You have to give due process and there must be a board, a hearing officer, fact-finder, that does that. Smith said, okay, he understands that it has to be a board but why the Board of Works? Hunt

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told Smith he doesn't know how to answer that question. Who would do it? Mr. Smith said, well, that's what he's asking is could it be another board or just whatever? Hunt responded, well it could be. He means, it could be one individual. Smith said, well, he doesn't want one but he's saying why, because, in other words..... Hunt stated, because this falls within the type of work that the Board of Works does. Smith said, oh, okay. So in other words, the Board of Works has the authority to suspend or to do whatever they want with this? Hunt said, not now. Smith said, no, he means after it's passed. Hunt stated, they will if this is passed. Mr. Smith said, okay, so now, isn't that a lot of power to give the Board of Works and not be elected? Hunt told Smith, well that's not a legal question, that's a political question and they will agree or disagree about it forever. It doesn't matter. The proposed ordinance proposes that the Board of Works be the body to provide due process. Councilman Steve Henderson said since they're revoking Ordinance 9-2005, which has basically basic prices in that that we no longer have, do we not know what the cost of each one of these permits are going to be and that's the reason we don't have them in there or is it just you want to circumvise the Council's responsibility to watch over the money because, if those are not in there, the Council has no say on the price. That would be you and the Board of Works, is that correct? Mr. Hunt told Henderson, last part of his question first. The Board of Works wouldn't have anything to do with it. Henderson said, wouldn't they, if Jerry sets the price, they would have to approve that. Is that not right? The governing body would have to approve that, Henderson said. Hunt asked Henderson, tell him again the section he's referring to. Henderson said he thinks it's Ordinance 9-2005. You're taking it out completely and inside that, there was a price structure within that document. Without that document being there anymore, there's no price structure anymore. Hunt replied, he's sorry, he doesn't have that in front of him and he doesn't recall. Councilwoman Lynn Johnson asked if she may say something. She thinks that price structure is there but it's just in a different chapter. Hunt told Mrs. Johnson that was his recollection but without having it here in front of him, he didn't want to pop off about it. Johnson said, well, she worked on the committee. Hunt said, but his recollection is that was a totally separate portion of this and is not being repealed. And that will stand after their action tonight. Johnson said, they kind of cut and pasted it into something else and so (inaudible) disappeared. Hunt said that was his recollection. Johnson stated, but it is actually in a chapter, it's just not in this. Council President Miller said, Mrs. Johnson, Mr. Henderson has the floor. Johnson said, she's sorry, excuse me, Mr. President, she's sorry. Henderson said, the question is, when these prices get set because there's no prices set in the document now, what's the procedure and how do these prices get set and how do they get regulated? Mr. Hunt told Henderson his recollection is the old price section is not being repealed and would continue. The Board of Works wouldn't have anything to do with that. All they are is a fact-finder to determine whether or not a license ought to be revoked. They don't set prices. They don't set a fee schedule. They have nothing to do with any of this other than to revoke a license. Henderson asked, okay, so who sets these prices, of the tests and the fees? Mr. Leming said he can speak to that. So, the reason, intentionally, permits and registration fees are not covered is because those are a separate item. License fees, (inaudible) they chose Prometrics, that license fee would go to Prometrics for providing the test and the accreditation. No money is collected by the City of Marion at all for licenses. Henderson said, well there's a renewal every year of that. They don't take the test so does that money, every year, go to those people or does it go to the City of Marion? Leming said there's a renewal of registration every year but not the license. Henderson said, right. So that money goes to the city, is that not correct? Leming replied, the registration does. The registration fees do today but that's covered separately. Henderson stated, okay, but if the price wants to be upped or changed, what's the procedure for upping the price? Mr. Hunt told Mr. Henderson he thinks he's reading two separate chapters. He's looking at Chapter 150.29 and the one that's being repealed is Chapter 113. Henderson responded, but he was looking at our own Ordinance 9-2005 which has that same code in it and you're taking that completely out. Hunt told Henderson, no, he needs to look at 150.29. That's the one that applies here. Chapter 113, which is the one he's referring to, let him find it. Henderson said the only question he has is how does these prices get..... Right now, we have no prices in there so who sets these prices and how will these prices get regulated? That's the question. Hunt said, take a look at 150.29. Henderson asked, and who does that? Hunt said, you've already done it. It's part of the Code of Ordinances. Mr. Henderson told Hunt he doesn't have that in front of him so can he tell him who sets those? Hunt said, you already have. It's part of the Code of Ordinances, 150.29. That was adopted in 2005. Henderson asked, and that was adopted under what ordinance, the 9-2005 that we eliminated? Hunt stated, 12-2005. Henderson commented, so that's a different one. Then that one was not listed on here. Hunt said, well, that's because it wasn't

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affected by any of this. Henderson stated, well the prices of the thing is affected. He just wants to know how the prices are regulated. Hunt said, it's already established. It's already in the ordinance, Ordinance 12-2005. It exists and it's not mentioned in this ordinance tonight because it's not being affected by it. Council President Miller asked Mr. Hunt, can he interrupt him? He thinks maybe he's dancing around it. The only question that he wants answered is who set the fees to begin with and who changes them if they're raised and he believes the answer to that would be the City Council. Hunt replied, well yeah. Miller told Henderson, the fees aren't going to change from what was approved in 2005 by the City Council and if they're changed now, it would be just like the Neighborhood Preservation thing, that they had the separate ordinance to establish all the fees. He told Hunt, so any fee schedule, correct him if he's wrong, in city government would be approved by the City Council. Hunt told Miller, and you already did that in 2005. Henderson said, except we don't have one established for the new testing. Miller said, the testing itself is not determined by us. It is determined by the company that administers the test and they get all of the money. So we can't tell them how much to charge for the test and the test is going to be administered by Ivy Tech. They're going to be proctoring the test. The registration fees are the only issue that we regulate and if they're changed, we'll do it. Henderson said, that was the question. So it's controlled by the City Council. Miller said, correct. He told Foustnight, he would only add, it would have been helpful, probably, if he had at least just given them a copy of the part, the ordinance that has the fees in it and that would still be helpful if he could do that. Foustnight told Miller, we can provide that to you but, like he told Mr. Smith to go to the Clerk's Office the other day to get a copy of that because he thought you, as a Council, would have this ordinance book available. He, as a department head, we have this ordinance so he assumed everybody would have a copy of this. Miller told Foustnight, he believes that's an incorrect assumption. We do not have a personal copy of all the city ordinances, no. He's not sure we want one because of the cost of reproducing them. We certainly would have access to them but we don't have our own. So it would still be helpful if he could print those fees and distribute them to the City Council, either by email or courier or whatever. Councilman Don Batchelor said he guessed he has several concerns. Who's going to enforce this new ordinance? He asked Foustnight if his office is going to enforce this. Foustnight told Batchelor the Building Department will. Batchelor said, then, if that is the case, then he guessed he's looking at, we have contractors coming up, explaining what you should be able to do because you're going to be labored with enforcing the (inaudible). Foustnight asked Batchelor, are we going to enforce the codes? Yes. Batchelor told Foustnight, okay, then if you're going to enforce the code then you need to be familiarized with the code. Is that not correct? Foustnight said, yes, we need to be familiar with them. Batchelor said, so that's problem one. Okay? The other thing that comes to mind is we understand he explained at the last meeting about the testing procedures and the potential cost that is involved in that. When he went to school back in '79, '80, he took building construction at Ivy Tech and the classes that we took involved everything from building a footer to installing the carpet, the whole gamut. Now, that's what we were instructed and taught how to do. Now, is he a professional electrician? Hell no. But does he know enough about it to know if someone is doing it not properly? Yes, he knows this. Okay, with the older homes in Marion, and with the electricity, electricians, 60, 70, 80 years old, will all of them pass today's standards? Foustnight asked, would all the homes? No. But if you go in and you remodel that home then you're going to bring it up to code. Batchelor asked, if you remodel the home, but if you choose not to, it's not going to be brought up to standard, correct? Foustnight said if an electrician goes in and he's working on that home, he will bring it up to code. If you, as an individual homeowner, and you decide that you want to run a wire from here to there then you can run that wire because you're the property owner of that. But today, if we go out there and, for instance, you have a fire and you have to be rewired then you bring it up to today's standards. Batchelor said, now, with that being established, he thinks with today's standards, even when he went to school back in the '70s, okay, when he did building construction, even back then, laws change, codes change and the whole nine yards but the general things are still in place. They have made things more convenient, easier to do, but at the end of the day, if you knew how to do it back in the '70s, you know how to do it today. Foustnight told Batchelor, not necessarily. Batchelor told Foustnight to let him finish. Now, as he stated, codes and stuff changes but the general idea of electricity, getting from point a to point b and to c, what have you, that's not changed. True or false? Foustnight replied, well, electricity goes from point a to b but also, if he may, back, he's (Batchelor) talking 50 years ago, 60 years ago or whatever, yes. When that was installed, it may have been installed correctly but today, it's like a car from 1920 to 2018. There have been more improvements in that vehicle, it's more safe, and that's exactly what the codes are written for. They're made so

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that individuals are safer, that they use the new material, that they bring everything within code. Batchelor said, true and he doesn't (inaudible) that, he doesn't argue against that. He's just saying the general idea is still the same. Foustnight said, as far as electricity going from point a to b, correct. Batchelor said, the other (inaudible), with the testing and we're saying that you have to have a license for various things, okay, you have to be licensed. You have to have various licenses. Is it possible in the testing process that the test itself, could it be structured whereas rather than having several different licenses, seven different testing, is it possible they could combine some of these tests because if they are able to, when he looked at the books and stuff that he had when he was in class, he had probably about 10 or 15 different books, study books that they had. Now, when the test is given, okay, isn't it possible that you could structure the test whereas it would cover the basic residential layout from the plumbing, electrical, the roofing, the whole nine yards. He guessed what he's trying to say is, rather than having all these different tests and each one of these tests are going to cost \$150, \$175, perhaps, to take the test. So is it possible the test could be structured where it would include all these other areas rather than \$150, \$175 a test, could we structure the test where it would cover these various areas rather than having to.....? Foustnight answered, well, if you were a general contractor, it would cover some of those areas. Batchelor asked, if he was a what? Foustnight said, a general contractor. Now, if you're a person doing your own construction, be it whether it's on your house and you're doing your own construction and you pull that permit and he thinks Mr. Smith had said something about how do we know that you know how to do quality work or whatever, and again, that's where we would come in and do our inspections and make sure. The testing is, it's for the categories. You know, if you're a general contractor and you have that license and you're a property owner, if you're going to work on your property and you put in the footer, yes, you put that footer in. If you start to put the foundation, if you're qualified to do it and you pass the inspections, yes you can do that. So, as far as the license, as far as a contractor needing to take a test for electrical, yes, that would be required. If you're a licensed plumber in the state then you wouldn't be required to take that license. So, yes, to try to put them all together, no, he doesn't think that would be acceptable. Batchelor asked Foustnight, why can't you make it work? Foustnight replied, because, again, we felt that if you're going to take and do electrical work, it's hard for somebody to do electrical work, do framing, do concrete work or whatever and be able to do all those categories as a contractor. You, as a homeowner, you're going to have difficulty doing some of that. We know you will and that's why we have the inspection process. As far as the categories, we tried to take and put the categories that were necessary, as far as the electrical, as far as HVAC and those kind of things that are necessary or a vital part of the building trades. Councilman Brad Luzadder asked Foustnight, is his department needing work? Is his department in need of work to do? Foustnight replied, no. Luzadder said he guessed he's trying to figure out is what we're asking his department to do, is it warranted and is it able to be taken care of by the current staff in which he has? We're asking him to shoulder more work on this. Mr. Foustnight told Luzadder, if he didn't believe this was important, he wouldn't have brought this before you, as a body. To give them an example, they did over 800 inspections this year on residences and commercial properties throughout the city. We felt, and he still does, he feels very strongly about this ordinance. He feels that this ordinance is more of a safety ordinance than a load for us. We go out and do inspections every day. Those inspections, we follow the code. We have code books with us. He told Mr. Luzadder, we know, if you do something that's not within code, we tell you it's not within code and you'd have to make those repairs. It's the same way with a contractor. If we go out here and they don't follow the procedures or the codes, we make them correct that before they can do any more. We feel, maybe he should say he feels that the reason why we need this is for the safety of you, for the safety of your family and for the safety of all the citizens in the city. We keep referring to \$150 for the test or \$175 for the test. He guesses his thought is, yes maybe \$175 sounds like a lot of money sometimes to people or whatever but he guessed if he, Mr. Luzadder, knows that somebody has taken that test, has taken and passed it, that they're registered in the city as a contractor, that we can come in and make sure that what they have done is correct, he would think, as an individual, that the peace of mind you would have knowing that maybe you or your family weren't going to be hurt or worse, killed, within that structure because it wasn't done correctly and so, yes, we have himself and another boy that does all the inspections but we have a 24 hour turnaround so we make sure that, between the two of them, they get those inspections completed. Luzadder asked, and so the code runs parallel with the license? Foustnight answered, yes. If you have a license or if you take the license and you pass that test then we will give you a registration to do the work that you are qualified to do, be it an electrician or whatever. Luzadder stated, so just because you know the code does not mean that you know

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how to do the job. Foustnight asked, because you know the code you know how to do it? No, no, but this testing will help make sure that you know what the codes are, make sure that you can pass them, that you will be qualified to perform the work that's required and then that's where we, as a Building Department, we come in and check and make sure that yes, you are. Luzadder said, and just because you have a license doesn't mean you're the one that's going to be doing the work. You're going to have people that are going to be up underneath you. He's sure the person that has the license isn't going to be there all the time. Foustnight said, and that is the reason why we put the ratio in there, 1 to 20, so that if the company hired has 10 employees, say Mr. Luzadder has the company Luzadder Construction. You take the test or one of his employees takes that test and passes that test, let's use electrical for instance, you pass that electrical test then if you took the test then you're responsible for your 10 employees. It's your responsibility to make sure that they do quality work, but in the same token, we, as a city, will come behind and make sure that quality work was done and is within code. Within this ordinance, we also have where a license can be suspended six months, a year or permanent. That was put in there to make sure that we don't have an individual, like Mr. Luzadder here, that says okay, I passed the test, I have the employees and they can go out and do it and I'm not worried about it. Because once we start going out and doing inspections and we see, over a continuous time, that you're not performing the work to quality standards or to the codes then that's when we would go before the Board of Works and say we would like to suspend his license for six months because of this. We would have all that information together. At the same time, the Board of Works gives you an opportunity, as a construction worker or whatever, that you can go and you can present your evidence to them and say here's what I've done, here's (inaudible) and all this. That's when the Board of Works would determine yes, they're going to affirm his order or suspend you for six months, a year or whatever, or they can modify it or they can take and they can reject it and say no, we don't believe there's an instance that a suspension is deemed necessary. Luzadder asked, why would we put that before the Board of Works instead of turning it over to our City Judge? Foustnight replied, because, as Mr. Hunt said, the Board of Works is the agency for the city that would do it or regulate the standard there. Mr. Luzadder asked, then why doesn't all the stuff run through the Board of Works instead of us having a City Court? He means, he would think the City Court, if someone's going to have their house demolished or they don't, if they go against one of the codes in which you have and they're given a citation, don't they have to come before the Judge? Mr. Hunt told Luzadder, that's a good question. Typically, when things are administrative, they flow through an administrative procedure to an administrative body that makes a decision. In this case, that would be the Board of Works. You then have a right to an appeal if you're aggrieved by the decision of the administrative agency and the appeal goes to a court. So you normally don't invoke the jurisdiction of a court on an administrative matter until you've exhausted your administrative remedies. So, in this particular instance that he's talking about, Mr. Luzadder, you have an ordinance, you have requirements that are to be met, and you violate those, your license can be revoked by the administrative agency and then if you disagree with that, you can file a claim in court, appealing that decision. You try not to invoke the jurisdiction of a court on administrative matters because they're busy with other things, like violations of criminal laws and that sort of thing. Luzadder stated, he guessed if he's having someone who is operating a business and they're not doing what they're supposed to be doing then instead of putting them before a board that really has no idea, he would rather see it go before a Judge who actually is able to level the fines and take care of the problem. Hunt responded, first of all, there is no fine for license revocation. If you, as a homeowner, feel like I messed up on rewiring your house, you can sue me and go directly to court. That's between you and me. But his failure to meet the requirements of his license is between me and the license issuer, which is the city. And so the city then takes him before the administrative agency, the hearing board, that is designed to provide him with due process before he gets his license taken away. You don't want an individual in the Building Department saying "I don't like the work you did so I'm going to take your license away". You can't do that, that's not providing the person with due process. So you give them that due process by giving them an administrative hearing that then can be appealed in court but, as he said, if you, as the citizen for whom he's done the work, aren't satisfied with it, you don't have to do that. You can take him directly to court and sue him for whatever the damages are. Luzadder asked, and are we requiring the people that are doing the inspections, should not they be licensed under the test before they come out and inspect? Hunt told Luzadder he can't answer that. Luzadder stated, he means if we're going to require the business to do that then shouldn't we, as a business, be required to follow the same rules in which we're asking them to follow? Mr. Foustnight told Luzadder he doesn't know. They go through continuing education classes over

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electrical, they go over HVAC systems, they go over.... What they do is they have always went out, they have the code book with them and say yes, this is within code, no, this is not within code. They also kind of piggyback upon the State Fire Marshall's Office there within this area that if they have any questions or anything, they provide service to us. He guessed that would be a determination as to if the Administration was going to require them to go take those tests or not. Mr. Luzadder told Foustnight, well currently, he's asking them to decide whether we're going to put this into effect or not. If we're going to be requiring that the businesses do so, are we going to then take the tests so that we're able to go out and do the work? Foustnight replied, he wouldn't have any problem with himself taking the test, he doesn't have an issue with that. But, the way it is now, of course it's required they continue their education and they follow the code. Luzadder stated, and he would assume that those funds then, to take the test, would then be paid for by the city. He guessed, if it's to a contractor and they have to go get the license and it's going to cost them certain amount of monies, he's sure they're not going to absorb that. They're going to be passing it down to their customer as they go along. Are we asking our citizens then to have to pay higher bills so that we can have people that are licensed? Foustnight said, he's sorry, are we asking the citizens to pay more than what the city is? Is that what he's asking? Luzadder said he's assuming that the contractor will then pass those, whatever it costs to gain those tests, that's going to be spread out to their customers. Foustnight said, over a five year period. Luzadder stated, okay. Whether it's today or tomorrow, someone's going to pay it. Mr. Foustnight told Luzadder, that's no different, if you have a contractor come in and perform work at your house and it requires a permit, you as a property owner, you pay for that permit because anybody that is in the business will take and figure all their expenses and one of the expenses would be a permit. Luzadder said, well he can guarantee, if they're coming to his house, he's going to have to pay it because he doesn't do any of this work. He doesn't have one idea how to.... He has beautiful tools, has no idea how to use them. So, he means, he's having to make a rule for someone that he doesn't know to make this come into effect. He has to feel good about doing it and right now he's not for sure, with all the questions he's been listening to. Foustnight said, right, but again, as a contractor, if a contractor comes to his house and performs work, he knows, if a permit's required, he figures that. If it's like a remodel and it's \$60, he figures that amount of money into your estimate. Every contractor does that. Luzadder told Foustnight, okay, Mr. Miller, at the last meeting, talked to you about the gentleman that he had work on his house and has never once had an inspection and he's had the people do the work multiple times. He means, that's going to change for him. Now, before he does that, he would assume that we're all going to follow the law since we're putting it into effect. It's going to be something that everybody's going to have to shoulder. Foustnight stated, yes, and to refer to Mr. Miller there, the issue would be that he called somebody at 10:00 at night, that we don't know that he's out there repairing his house. We don't know. A contractor should, if he's responsible, he should tell the next morning. He should notify us that he did this or what. Did that happen, absolutely not. We have individuals that, at 10:00 at night, will go out and do it. That's why we changed some of our policies. One big policy we changed, real quickly, is the fact that AEP, we had electricians going out at 10:00 at night, pulling the meter, doing repairs, putting it back on. Or we've had them have the meters pulled and then they would call the electric company and say well, we've got it back and they'll just come and hook it up. Now, the electric company, unless we put a tag on there with a certain amount of information on that, they won't connect the electricity. So, we're trying to be more efficient, we're trying to be a more responsible department in what we're doing. And again, if Mr. Miller hires somebody at 9:00 at night, we don't know that, we don't know that. He calls Mr. Smith over here and he comes out there and repairs his (inaudible) and he pays him X amount of dollars, Mr. Smith leaves and probably will never ever tell us that he did it. The only way we're going to know about that is if Mr. Smith does something and it catches fire and the Fire Department back here, they come to his house and say it's an electrical problem and it started right here then it's a pretty good indication that Mr. Smith didn't follow the rules. Councilwoman Lynn Johnson said, Mr. President? Council President Miller said, Mrs. Cain was next in line. Councilwoman Deb Cain said she just had some comments. She wants to respond to some things. Mr. Batchelor said the statement that he has contractors coming up to explain the code. He didn't have contractors coming up to explain the codes, he was trying to find the answers within the ordinance because the questions were complex and they were difficult to understand. It's not the codes that he was trying to explain or trying to answer. The ordinance was written and the questions were complex and she was even having a hard time actually kind of following Mr. Smith's questions and trying to find the answer. So, she thinks that the ordinance is well-written. She thinks it's for the, she believes, she doesn't think, she knows and she believes it's for

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the safety of the citizens. She would not want to have a plumber come in and do her electric if he didn't have the knowledge of the electric. She would like to know that the plumber knows what he is doing and if he's also an electrician, she would like to know that he knows both of those, separately, because she thinks both of those, you could really cause a lot of problems in a home if you didn't have the water line ran in the right way and it was over an electric line and it blew her house up because it dripped on this electric line and she had all these sparks coming. So, to have separate licenses for all these, she thinks is appropriate. In regards to the license, if you divide \$175 into five years, that's \$35/year. That's only \$35/year. So she doesn't think a contractor is really going to, you know, charge that much more to someone they are building for. Right now, a contractor has to register every year with the city anyway. That is not new. That is not something that's new. They already have to do that. They have to register today. So, the only addition is asking them to take a test and if a contractor can read the codes and pass this test then she thinks that they know the work because she's looked at these codes and she has no idea what they're saying, they are way over her head. So if they can read the codes, she really believes that they know what they're doing. We're not adding any work to Jerry because he already has to look for the registration of a contractor. The only addition is to say he wants to see the results of the test that they just took then they have the license and they can have this permit that they're asking for. Those are her thoughts. She really believes in this ordinance. She thinks it's something that we need to do because we're behind as a city right now, Cain said. Councilwoman Lynn Johnson said she just wanted to have a conversation with Mr. Foustnight. The testing location is basically an example, is it not, because are there not other testing locations around the State of Indiana that provide the tests that are needed to obtain the license? Foustnight said, yes. Of course, we're going to try to partnership with Ivy Tech to be our administrator of the test. Johnson stated, exactly and if you have a certain individual that shops a licensing test and the pricing of those locations, at different locations around the State of Indiana, this is actually not Ivy Tech, and they pass it with more than 70% then he will honor that exam and he will honor their license, will he not? They can say they've been issued a license or they have a test exam that they took here and they did this in Lafayette, for example, or the pricing of the testing was much cheaper in Ft. Wayne because the environment is more competitive with licensing or testing because there are testing locations, are there not, in the larger communities in our state that give these same tests? Foustnight answered, yes but if it's a company like Prometrics or whatever, they have their testing at a certain level. It wouldn't matter if you took a test in Ft. Wayne, you would still be paying the same amount of money. Johnson said, or a similar fee or a standardized fee, according to Prometrics. Okay, because this is sort of what happens in the industry. So, there's a fee for the testing itself and then there's an additional fee that is supervised by the administer of the test. Okay? So there's two different requirements and they combine those fees and then charge for the licensing, or the test. So, actually, that test could be at a reduced price somewhere else because the administrative fees are less. So, these things could be shopped. There's such a thing as, actually, this is a universal license, is it not, and it can be used all over the State of Indiana and any other state in the nation. Foustnight said, correct. Johnson said, okay, so it's their possession, it's an asset of their business or their career. It becomes a personal asset, just like any other asset that you would pay for to obtain, like licensures for different kinds of businesses and different kinds of endeavors. You know, a beauty shop has a license and it's an asset to the beauty shop. These are assets that become a possession. They're not expense items, they become a personal asset for that individual that holds that license. So, they can actually shop the pricing of the testing. If they pass it over a 70% and it's the identical test, they can walk into his office and say here's their scores, here's their testing certificate and he will honor that. Foustnight said, correct. Mrs. Johnson stated, so, if they're industrious and they are having a problem paying for this, they're going to have to pay for it one time. Right? Foustnight answered, every five years. Johnson said, every five years. So, then they would have to plan their future accordingly and he would put them on notice. He would say if you want to do certain things, these are the things you would have to do in order to accomplish this goal. Is that not true? Foustnight told Johnson, right. Johnson stated, it's just like if you want to drive a car, then you have to take the appropriate testing or the appropriate training in order to get behind a motorized vehicle that is a deadly weapon. Right? Foustnight said, correct. Johnson said, so if you're going to build a house or you're going to put together a deadly weapon for people to live in because, actually, if you don't do your job, Deborah (Cain) is telling her you have a deadly weapon on your hands, right? Mr. Foustnight commented, could be, yes. Johnson stated, yes, you do. So what we're trying to do is protect our citizens from people who have our lives in their hands. Is that not true? She means, a plumber has our lives in his hands. An electrical person has our lives in their hands. Okay? A

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natural gas person can cause her car to explode and she would never know what happened. Can they not? Okay? So these people have our safety of our city and our citizens in the palm of their hands and if they can't pass a test and go in front of someone and say they know these things and they're going to be careful, they're going to be safe for them and they're going to watch out for them then we're all at risk. Is that not true? Foustnight told Johnson, you're correct. Council President Miller told Mr. Homer he was the only Council member that did not chime in. Did he wish to say anything? Councilman Dave Homer said, sure. He would agree with he's not sure he can follow the actual questioning at the beginning but he thinks there were probably more questions that he would like to understand, maybe speaking with Mr. Smith or Mr. Batchelor, Mr. Henderson might clear his mind a little bit. He does want to tell them though that, want to give them just a scenario and he thinks Jerry has covered this, that he knew a person who hired who they thought was a legitimate contractor. They were an electrician and this electrician came in, there was an agreement made with the electrician, don't need to mention the name of the company, and they rewired. It took them a couple days to do that. When they did it, this was a rental property that belonged to this individual and this person had looked in the yellow pages and saw advertising and picked out this electrician and somebody said, "yeah, I think they're a pretty good company". So along the way, they get ready to, and he thinks Jerry touched on it, that back in the day, he means, people, he thinks he (Jerry) said that they put tags on electric meters and AEP won't reconnect that service but in this instance, this person who was an electrician and who kind of worked with AEP on the side would (inaudible) this electricity and then he had some kind of side gig with AEP and they came out, he called them on the phone, it was after hours, no tag on the meter. They reconnect the electricity and it blew absolutely every electronic piece of equipment to smithereens in that house. Now, how does he know that? If you go to the Indiana State of Appeals and look at that case of Home Improvement Fraud that he filed, he was burned by a contractor and he will always be in the State Court of Appeals for the State of Indiana because he got burned by an electrician and man, he didn't like it. He had to pay money to appeal it. He first lost it in civil court, secondly he had to pay money to appeal that and he was lucky to win the appeal and it was on Home Improvement Fraud. The Prosecutor's Office deals with fraud on all levels but Home Improvement Fraud is something that they deal with quite a bit, where people, you know, they sign an agreement or they make an agreement with a company to come in and do that. He thinks that the licensing and then requiring them to test so that they have the knowledge, but not only that, then they register with the city so that when people hire contractors they know they can check with the city, that they're bonded and insured, they're experienced people who know how to do that. And he understands what Mr. Miller refers to where he's had somebody come in his home a lot of times, done work and he's never had a problem. He believes you can implement this ordinance, we can implement any ordinance and people are still going to circumvent it. Would you agree with that? Foustnight replied, yes. Homer said, so, people, if Mr. Miller chose to, just to use as an example, Mr. Miller (inaudible) general public and he decides that his guy is the guy he feels comfortable with and that guy feels comfortable coming in to do that, he's still going to do it. Unless he gets caught. Foustnight stated, right, unless he would get caught. Homer said, then he pays a penalty for that. So, one, he thinks the testing legitimizes the process for people to come in and do, hopefully, quality work. It requires them, once they do that, if he has work done at his home, he hires a contractor, they come in, he pays the contractor for the permit for everything that's going to be done. Is that correct? If it's plumbing, electrical, roof, there's a fee for every one of those. Foustnight said, correct. Homer said, so if it's a \$500 permit, covers all those and he pays the permit. Foustnight stated, right, whatever the fee would be for that, be it whether it's roofing, remodeling or whatever. Homer said, but the contractor he hires has to be registered with the city, is that correct? Foustnight said, correct. Homer said, or he should be. Foustnight said, yes, he should be. Homer stated, to be legitimate so we know, doing the work. So, he thinks he knows what we're trying to do here, he thinks it's a good thing, he thinks it's good for the community. He thinks other communities have done that. But again, he'd like to know a little more from some of the other Councilmen, he thinks, what their concerns would be and if there are ways that we can maybe work those differences out, whatever they are. He's not sure. He thinks we need the fee schedule or whatever was requested earlier, in front of us so we can look at that, if he (Foustnight) could provide that to each one of them. He told Miller, whenever he's ready for some sort of a motion, he can make a motion. Mr. Luzadder said they still have to have a public hearing. Homer replied, that's true. So, that's all he has. He appreciates his (Foustnight) work on it and the committee's work. He understands what they're trying to do. He doesn't think it's, he's not trying to make it difficult for people but he does understand people who have done this line of work, be it masonry, cement

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work, whatever that is, electrical on the side but there are people out here, trying to make a living, it's a small guy, it's not necessarily a contractor who is doing work. The intent is not to hurt those people. The intent is to make sure we're doing it right, we're doing it safely, that they abide by the rules and the registration fees and the licensing for the city. Foustnight told Homer, that's correct. And he might state that they, as a Building Department, they go around the city every day. They see contractors, a lot of them from out of town that come in, that try to do work and they catch them with no permit, they're not registered as a contractor, they have no liability insurance, not bonded, whatever the case may be. So they see this on a daily basis and so this ordinance is to protect those individuals, like he (Homer) was talking about, where you have this fraud. It helps protect that older woman out here that gets intimidated when they come to her door and, before the evening's over, she's signed that paper because she's intimidated by that contractor. Everybody in the city should be able to call the Building Department, say okay, Mr. Jones over here, is he registered as a contractor? They can look it up in their system and say, yes he is, he did take the test, he is licensed in the city to work. Now, if Mr. Jones isn't, at that time they'll tell her, he's not registered as a contractor, therefore, he can't do the work in the city. So, this is not only a safety issue but it protects those individuals that have been scammed. They've had conversations, he thinks everyone here has had conversations where they've talked to individuals who have asked for some type of work to be done and the contractor will say, well, give him half up front or whatever. And so they give that contractor money, or individual money and they never see them again. And that's where they have so much fraud that they're talking about. And it's on the rise. He means, he (Homer) deals with it on a daily basis. They get calls upstairs weekly on people that have (inaudible) and wanted to do work for them, they give them money and then they never see them again and that's where they refer them to his (Homer) office basically, saying that's not an issue we would have to deal with because it becomes a fraud issue, that they would need to talk to their attorney or talk to the Prosecutor's Office or whatever. So, yes, is this ordinance going to solve all the problems? Absolutely not. But what it's going to do is it's going to make those individuals that want to do work, that want to do the quality work, it's going to ensure that people understand that they can do that work, that it doesn't matter if it's a large corporation out here doing commercial application or it's a residential person out here doing his own work. It still requires inspections and it still requires permits and it still requires people to be able to do the work correctly. Council President Miller said they're going to take about a 10 minute recess please. He would like to confer with Mr. Hunt and Mr. Stephenson for about 10 minutes. Mr. Hunt asked if he could make just one comment. If they want to write this down, amlegal.com. If they go to amlegal.com, click on Code Library, it'll bring up a list of all the states, click on Indiana. It'll give you a number of cities in the State of Indiana, click on, obviously, Marion. And then there's a link to view code and you click on view code and it'll bring up the entire codified ordinances of the City of Marion. You can find, he thinks he said it was 150.29, you can find that in there. And that'll be good for your future reference because you can find any of the codes you all have enacted through the years. Miller said, okay, let's have about a 10 minute recess so he can confer with legal counsel and then we'll resume in about 10 minutes. After the recess, Miller called the meeting back to order. He said, a couple of observations. Obviously, he's troubled, somewhat puzzled at this stage in the process on this particular ordinance, that we are still obviously a sharply divided Council and we have more and more questions. He doesn't know why they haven't been answered. The ordinance has gone through committee hearings. Councilwoman Cain said, because no one came to the committee meetings. Miller said, okay, well let him finish what he has to say. As he said, he's really surprised and troubled, at this point in the process, that we still have this many questions, this much indecision. He senses we are a divided Council. He's not going to guess what the division is in numbers. He considered two options in talking with our attorneys. One, he has the right to send the ordinance back to committee for further study so we can try to resolve these questions and come back with a more united front. They would have the right to overrule him if he were to suggest that. His second alternative is to send it back to committee, we're back to square one. We would have to re-advertise and we would have to have another hearing. His second option that the attorneys suggested, he can delay the public hearing for two weeks. It will not have to be re-advertised. We will pick up with the second reading in two weeks and that is what he would recommend we do. That would require their vote, it would require a majority vote to delay the public hearing. It actually would be 13 days since we're meeting a day late. The public hearing would move to the 15th of the month. In the intervening time, we need to establish a procedure for Council members getting together with Mr. Foustnight, perhaps with an attorney, to try and see if we can resolve the differences. He hears even those of you who he might suspect would be in favor of voting on

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it tonight saying it would be nice if we could have more of a meeting of the minds than we currently have. So, that would be his recommendation. His apologies to those of you who came tonight for the public hearing but he thinks it's a safer approach to take if the alternative is a vote voting it down this evening or a tie vote. You may notice we're one Council member short so we would have the prospect of a 4-4 vote because Mr. Brunner is not here. Councilwoman Lynn Johnson said she has one question. At this point in time, if we delay this for 13 days and we review it, have a public hearing, we are not allowed to change, alter, or modify this ordinance, are we? Miller replied, he doesn't believe they can, can we? Council attorney Phil Stephenson told the Council they can always amend the ordinance until it's passed, even the third reading. Johnson said, so we could amend it. She was thinking, in the meantime, we could have a committee meeting on our own and see what the division is and see what maybe the options are and what the suggestions would be to the ordinance and maybe we could all move toward combining our ideas and maybe modifying or shortening or making it clearer. If she were to vote tonight, she would vote for a delay in the public hearing. Miller stated, and (inaudible) that we would have to clarify this would have to be a public meeting. We would have to announce it. Johnson said, exactly and we would have a committee and the committee would bring in everyone and we could all come in together and we could have a discussion. Miller said, one more comment and then we need to move forward. Councilman Steve Henderson said, in reference to not showing up to the meetings, the last two meetings, he did not get an email or a letter in the mail even asking him to come to those meetings. He's just hoping that, in the future, we will let everybody know when those meetings are. Mr. Miller called a point of order and said no more discussion on that issue, please. That's not an appropriate discussion right now. The issue before you is his recommendation that we delay the public hearing for two weeks and he would need a motion and we would need a majority vote. It doesn't require a 2/3 vote as we're not suspending the rules or anything. He would entertain a motion for a two week delay in the public hearing. Motion was made by Batchelor that they delay moving on this ordinance for a period of 13 days until their next Council meeting. Motion was seconded by Johnson and carried by the following vote. Aye: Luzadder, Homer, Smith, Cain, Henderson, Johnson, Batchelor and Miller. Nay: None. Miller said, very well. He will be in touch with each of them tomorrow, in a legal manner, just to find a common time when they can get together. Whether they want to do it as an ordinance committee meeting or he'll explore the other options they might have. Luzadder said they could do it as a committee as a whole. Miller said, yeah, they may do it as a committee as a whole as they do for the budget meetings. Mr. Foustnight said, if he could, he would like to take this opportunity for any of you Council members, he knows Mr. Smith came up to his office, anyone that would like to come up and talk to him concerning this ordinance or whatever so that maybe we could sit down and clarify some of the points maybe that have been brought forward tonight. He would encourage them to come prior to it or, if they as a Council, would like to have a meeting where he would attend. Miller told Foustnight, certainly, they would want him to be there obviously. Miller said, again, thanks to all of them that came to testify tonight. They appreciate their interest in city government.

Being no further business to come before the Council, on a motion by Homer, 2nd by Batchelor, the meeting adjourned. Time being 9:05 p.m.