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BILL NO. G-12-12-11 (*As Amended*)

GENERAL ORDINANCE NO. G-37-12

**AN ORDINANCE AMENDING TITLE 7,
CHAPTER 72 OF THE CITY OF FORT WAYNE
CODE OF LAWS TO ESTABLISH
ADMINISTRATIVE ADJUDICATION OF
PARKING CITATIONS.**

WHEREAS, The City of Fort Wayne desires to efficiently and expeditiously enforce its parking laws; AND

WHEREAS, Indiana Code §36-1-6-9 authorizes the City of Fort Wayne to implement an administrative process to enforce ordinances that govern the standing or parking of vehicles.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That § 72.94 of Chapter 72, Title 7 of the City of Fort Wayne, Indiana Code of Ordinances be **added** as follows:

§ 72.94(A) - Definitions. As used in this article, the following terms shall have the meanings ascribed to them in this section:

“Parking Citation” means a notice issued pursuant to §72.90 of this Code, and which pertains to the stopping, standing and parking of vehicles.

“Party” and “Parties” refers to the city and respondents.

“Respondent” means a person to whom a notice of hearing is issued pursuant to section §72.94(D) of this article.

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§ 72.94(B) - Administrative adjudication provided. It is hereby declared to be the policy of the City of Fort Wayne that parking citations which are not resolved pursuant to the enforcement procedures of Chapter 39: Ordinance Violations Bureau of this Code may be subject to enforcement in administrative proceedings as provided in this article.

§ 72.94(C) - Hearing Officers; appointment and term; qualifications; conduct.

(1) The administrative adjudication of a parking citation under this article shall be presided over by a Hearing Officer appointed by the Mayor. The Mayor may appoint more than one (1) Hearing Officer for contemporaneous terms, as necessary to address in an expeditious manner all parking citations referred to them pursuant to this article. Nothing in this section shall prohibit an individual who is an employee of the city from being appointed or serving as a Hearing Officer.

(2) A Hearing Officer shall be appointed for a term of one (1) year and until a successor is appointed, but shall serve at the pleasure of the mayor. A Hearing Officer may be reappointed for successive terms.

(3) A Hearing Officer shall not preside over a hearing if the Hearing Officer believes he or she is subject to disqualification, or if by motion of any party it appears that the Hearing Officer is subject to disqualification, for:

(a) Bias, prejudice, or personal interest in the outcome of a hearing;

(b) Knowledge of a disputed evidentiary fact which might influence the decision;

1 the City Attorney may either file an enforcement action in court, or issue a
2 Notice of Administrative Hearing to the person upon whom the citation was
3 served or to the person who is listed with the Indiana Bureau of Motor
4 Vehicles as the registered owner of the vehicle identified on the citation.

5
6 (2) Service of Notice of Administrative hearing shall be by United States
7 mail to the respondent's last known address, or by personal service. Service
8 on an artificial person or a person incompetent to receive service shall be
9 made on a person allowed to receive service under the rules governing civil
10 actions in the courts. The violations clerk shall keep a record of the time, date
11 and manner of service.

12 (3) The violations clerk shall cause a copy of each notice issued pursuant
13 to this section to be delivered to the Hearing Officer who will preside over the
14 hearing.

15 (4) Each Notice of Administrative Hearing shall include the following
16 information:

17
18 (a) A caption for the hearing, which shall include the name of each party
19 expected to participate in the hearing, and an official file or other reference
20 number;

21 (b) A statement of the date, time and place of the hearing;

22
23 (c) A statement of the nature of the hearing, including the legal authority
24 under which the hearing is to be held, and the parties' procedural rights at
25 the hearing;

1 (d) A statement of the date, time and place of each alleged violation as
2 stated on the parking citations, and the maximum penalty that can be
3 imposed thereupon;

4
5 (e) The official title and mailing address of the Hearing Officer and a
6 telephone number through which information concerning the hearing may be
7 obtained;

8 (f) The official title, mailing address and telephone number of the person
9 who has been designated to appear on behalf of the city; and

10
11 (g) A statement that a party who fails to respond to the notice of the
12 hearing, or to participate in the hearing, may be held in default.

13 (5) Notice of Administrative Hearing shall be issued at least twenty (20)
14 days prior to the date of the hearing.

15
16 § 72.94(E) - Prehearing procedures.

17
18 (1) Prior to the hearing, the Hearing Officer shall give the parties an
19 opportunity to file documents or motions regarding matters such as
20 continuances, discovery, and any other preliminary matters. At the time of
21 filing, a party shall serve a copy of all filed items on each other party.

22 (2) Motions for continuance shall be filed no later than seven (7) days
23 before the date assigned for the hearing, unless the reason therefor is shown
24 by affidavit to have occurred within the seven-day period.

25
26 (3) The Hearing Officer, upon request by any party or upon the Hearing
27 Officer's own initiative, may issue subpoenas and discovery orders in
28 accordance with the rules of procedure governing subpoenas and discovery

1 in judicial proceedings. The party seeking the subpoena or order shall cause
2 them to be served in accordance with these rules of procedure.

3
4 § 72.94(F) - Hearing procedures.

5
6 (1) The Hearing Officer shall afford all parties the opportunity to
7 participate in the hearing to the extent necessary for full consideration of all
8 relevant facts and issues. A party may present evidence in the form of
9 testimony, affidavits and documentation, engage in argument, and conduct
10 cross-examination. A party may participate in person or by counsel at the
11 party's own expense; if the party is not an individual or is incompetent to
12 participate, then the party shall participate by a duly authorized
13 representative.

14 (2) The City shall have the burden of proof that the respondent owned or
15 operated a vehicle that was parked, stopped, or left standing as alleged on
16 the parking citation, and the burden may be sustained by a preponderance of
17 the evidence; provided, however, that a citation, or a copy thereof, issued
18 and bearing the manual or electronic signature of the official issuing the
19 citation shall be prima facie evidence of the correctness of the facts specified
20 therein.

21 (3) The Hearing Officer shall conduct the hearing in an informal manner
22 and without strict adherence to the technical rules of evidence and procedure
23 which govern judicial proceedings. The Hearing Officer shall rule on the
24 admissibility of any offer of proof, and on other motions, and shall exclude
25 evidence that is irrelevant, immaterial, unduly repetitious, or excludable on
26 constitutional or statutory grounds. The testimony of each party and witness
27 shall be made under oath or affirmation.
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1 (4) The Hearing Officer may take official notice of any section of this
2 Code, and any law or fact that could be judicially noticed in the courts. The
3 Hearing Officer may call witnesses and conduct direct and cross-examination
4 of any witness.

5 (5) The Hearing Officer shall cause an audio recording of the hearing to
6 be made at the expense of the City.
7

8 § 72.94(G) - Decision.
9

10 (1) Upon the conclusion of each hearing or as soon thereafter as
11 possible, the Hearing Officer shall render a decision which includes a
12 determination whether the respondent violated the ordinance as alleged on
13 the parking citation, the amount of civil penalty which must be paid for each
14 violation with instructions on when and how payment shall be made, and a
15 statement of the parties' right to petition for review of the decision.

16 (2) The decision shall be based exclusively upon the evidence of record
17 in the hearing and on matters officially noticed therein. The Hearing Officer's
18 experience and specialized knowledge may be used in the evaluation of the
19 evidence.

20 (3) The Hearing Officer shall cause each decision rendered pursuant to
21 this section to be memorialized on a minute sheet or similar written entry into
22 the record.

23 (4) A decision rendered pursuant to this section may be modified by the
24 Hearing Officer who rendered it, upon the Hearing Officer's own initiative or
25 by motion of any party. Any motion to modify a decision shall be filed within
26 thirty (30) days after the date of the decision.
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1 § 72.94(H) - Record of the hearing. The record of each hearing under this
2 article consists of the following:

- 3
- 4 (1) The notice of hearing;
- 5
- 6 (2) The parking citations, if available;
- 7
- 8 (3) Any documents or motions filed or entered into evidence;
- 9
- 10 (4) Any written orders, subpoenas, and decision of the Hearing Officer;
and
- 11
- 12 (5) The audio recording of the hearing;

13 and shall constitute the complete and exclusive record for review of a
14 Hearing Officer's decision.

15

16 § 72.94(I) - Petition for review of decision; time limitation.

17

18 (1) A verified petition for review of the decision of a Hearing Officer,
19 stating the alleged error and any factual or legal basis therefor, may be filed
20 in the Circuit or Superior court of Allen County within thirty (30) days after the
21 day on which the decision is rendered. A party who does not file an appeal
within this time period forfeits the right to appeal.

22

23 (2) Any party who files a verified petition for review shall within fifteen (15)
24 days thereafter secure from the Hearing Officer a certified copy of the record
25 of the hearing, and file the same with the Clerk of the Court.

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1 (3) An extension of time within which to file the record may be granted by
2 the court upon a showing of good cause, which shall include the petitioner's
3 inability to obtain the certified copy of the record with fifteen (15) days.

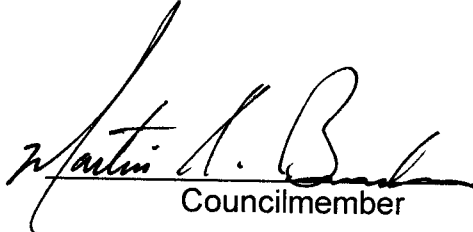
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5 (4) The failure of a party to file a certified copy of the record or to secure
6 an extension of time therefor shall be cause for dismissal of the petition for
7 review upon motion of any party of record.

8 §72.94(J) – Administrative Hearing Costs Fee.


9
10 For each action that results in judgment against Respondent for violation of
11 this chapter, the Hearing Officer may impose an administrative hearing costs
12 fee of ten dollars (\$10).

13 **SECTION 2.** All ordinances or parts of ordinances in conflict herewith
14 are hereby repealed. The invalidity of any section, clause, sentence, or
15 provision of this ordinance shall not affect the validity of any other part of this
16 ordinance.

17 **SECTION 3.** That this ordinance be in full force and effect from and
18 after its passage and any and all necessary approval by the Mayor and all
19 necessary publication.

20
21
22 
23 Councilmember

24 APPROVED AS TO FORM
25 AND LEGALITY

26 
27 Carol Helton, City Attorney

Read the first time in full and on motion by Bender and duly adopted, read the second time by title and referred to the Committee on Regulations (and the City Plan Commission for recommendation) and Public Hearing to be held after the legal notice, at Room 030 - Council Discussion Garden Level - Citizens Square, Fort Wayne, Indiana, on the 11th day of December, 2012, at 9:00 o'clock P.M., E.S.T.

DATED: 12-11-12

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Benson placed on its passage. (PASSED) by the following vote:

and duly adopted,
LOST

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>9</u>			
BENDER	<u>✓</u>			
CRAWFORD	<u>✓</u>			
DIDIER	<u>✓</u>			
HARPER	<u>✓</u>			
HINES	<u>✓</u>			
JEHL	<u>✓</u>			
PADDOCK	<u>✓</u>			
SHOAFF	<u>✓</u>			
SMITH	<u>✓</u>			

DATED: 12-18-12

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING) ORDINANCE (RESOLUTION) NO. G-37-12 on the 18th day of December, 2012

ATTEST:
Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

SEAL
[Signature]
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 19th day of December, 2012, at the hour of One o'clock P.M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 20th day of December, 2012, at the hour of 9:00 o'clock

Thomas C. Henry
THOMAS C. HENRY, MAYOR