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4 AN ORDINANCE amending 35.11: "Promotions; Certification of Eligible Members;  
5 Probation; Procedures" and 35.12 "Disciplinary Actions; Grounds; Hearing; Notice;  
6 Requisites; Procedures; Appeal" in Chapter 35: Fire Department, of the  
7 Fort Wayne Municipal Code of Ordinances  
8

9 WHEREAS, the City of Fort Wayne Code of Ordinances ("FWCO") §§ 35.01 – 35.17  
10 promulgates the organization, operation, and powers of the Fire Merit Commission;  
11

12 WHEREAS, promotion procedures are located in FWCO 35.11;

13  
14 WHEREAS, disciplinary actions, ground, hearing, notice, requisites, procedures, and  
15 appeal are located in FWCO 35.12;  
16

17 WHEREAS, Ind. Code § 36-8-3.5-1(f) authorizes a unit that adopted a merit system  
18 under Ind. Code § 36-8-3.5-3 to amend the merit system as long as at least one-third, or two  
19 members in the case of the five member Commission, of the merit system's members are elected  
20 by the active members of the department;  
21

22 WHEREAS, current provisions within the system of discipline and promotion have  
23 unnecessarily exacerbated tensions between members of the Fire Department and its leadership;  
24

25 WHEREAS, Common Council desires to amend Section 35.11 of the FWCO in order to  
26 reflect the belief that promotion should more accurately reflect those members achieving the  
27 highest qualifications as determined by the Fire Merit Commission; and  
28

29 WHEREAS, Common Council desires to amend Section 35.12 of the FWCO in order to  
30 more specifically outline the disciplinary options of the Fire Merit Commission and its ability to  
31 opine on the executive's decision to demote or terminate when that decision is not within the Fire  
32 Merit Commission's purview.  
33

34 NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF  
35 FORT WAYNE, INDIANA,  
36

37 **SECTION 1.** That § 35.11: "PROMOTIONS; CERTIFICATION OF ELIGIBLE MEMBERS;  
38 PROBATION; PROCEDURES" in Chapter 35: Fire Department shall be amended and read as  
39 follows:  
40

41 **§ 35.11 PROMOTIONS; CERTIFICATION OF ELIGIBLE MEMBERS; PROBATION;  
42 PROCEDURES.**

- 43 (A) When a vacancy in rank occurs, the Fire chief shall present to the commission the  
44 three (3) members with the highest score on the eligibility list for the particular rank.

1 Within six (6) months, the commission shall promote one (1) of those members to fill  
2 the vacant position. The Merit commission shall select from the highest three (3)  
3 scoring candidates on the eligibility list, after consideration of the recommendation of  
4 the fire chief. The recommendation by the fire chief will occur in executive session of  
5 the merit commission.

6 (B) All promotions are probationary for a period not to exceed one year. At the end of the  
7 period, a probationary member's superior shall review the member's performance and  
8 recommend to the commission that:

9 (1) The promotion be made permanent; or

10 (2) The promotion be revoked.

11 (C) The commission shall prepare a rating chart for the superior's use in making the report.  
12 The commission shall review the report and decide what action should be taken. The  
13 probationary member is entitled to appear before the commission and be heard on any  
14 matter detrimental to the member in the member's superior's report. The member is  
15 also entitled to be represented by counsel or another representative of the member's  
16 choice. If the promotion is finally revoked the member may not be returned to a rank  
17 lower than that the member held before the probationary promotion.

18 (D) Actions by the commission other than making the promotion permanent may be  
19 appealed within 30 days to the Circuit or Superior Court of Allen County, with the city  
20 being named as the sole defendant, as provided by IC 36-8-3.5-16(d).

21 **SECTION 2.** That § 35.12: "DISCIPLINARY ACTIONS; GROUNDS; HEARING; NOTICE;  
22 REQUISITES; PROCEDURES; APPEAL" in Chapter 35: Fire Department shall be amended  
23 and read as follows:  
24

25 **§ 35.12 DISCIPLINARY ACTIONS; GROUNDS; HEARING; NOTICE; REQUISITES;**  
26 **PROCEDURES; APPEAL.**

27 (A) The commission may take the following disciplinary actions against a member of  
28 the Fire Department:

29 (1) Suspension with or without pay of regulary members.

30 (a) In addition to the Fire Merit Commission's authority to suspend a member  
31 with or without pay, the Merit Commission may provide an opinion to the  
32 Executive of the City on Demotion, Dismissal, Suspension and/or other  
33 Discipline for the ranks of Assistant Chief, Deputy Chief, and Fire Chief

34 (2) Demotion of any member with the rank of Battalion Chief and below

35 (3) Dismissal of any member with the rank of Battalion Chief and below

36 If a member is suspended under this subsection, the member is entitled to the member's  
37 remuneration and allowances for insurance benefits to which the member was entitled  
38 before the suspension. In addition, the city may provide the member's allowances for any  
39 other fringe benefits to which the member was entitled before the suspension. The

1 commission shall determine if a member of the Fire Department who is suspended in  
2 excess of five days shall continue to receive the member's salary during suspension.

3 (B) A member may be disciplined by the commission if:

- 4 (1) The member is convicted of a crime; or
- 5 (2) The commission finds the member guilty of a breach of discipline,  
6 including:
  - 7 (a) Neglect of duty;
  - 8 (b) Violation of commission rules;
  - 9 (c) Neglect or disobedience of orders;
  - 10 (d) Continuing incapacity;
  - 11 (e) Absence without leave;
  - 12 (f) Immoral conduct;
  - 13 (g) Conduct injurious to the public peace or welfare;
  - 14 (h) Conduct unbecoming a member; or
  - 15 (i) Furnishing information to an applicant for appointment or promotion that  
16 gives that person an advantage over another applicant.

17 (C) If the Chief of the Fire Department, after an investigation within the department,  
18 prefers charges against a member of the department for an alleged breach of  
19 discipline under subsection (B), including any civilian complaint of an alleged  
20 breach of discipline under division (B)(2)(f), (B)(2)(g), or (B)(2)(h), a hearing  
21 shall be conducted upon the request of the member. If a hearing is requested within  
22 five days of the Chief preferring charges, the parties may by agreement designate a  
23 hearing officer who is qualified by education, training, or experience. If the parties  
24 do not agree within this five day period, the commission may hold the hearing or  
25 designate a person or board to conduct the hearing, as provided in the commission's  
26 rules. The designated person or board must be qualified by education, training, or  
27 experience to conduct such a hearing and may not hold an upper level policy  
28 making position. The hearing conducted under this subsection shall be held  
29 within 30 days after it is requested by the member.

30 (D) Written notice of the hearing shall be served upon the accused member in person or  
31 by a copy left at the member's last and usual place of residence at least 14 days  
32 before the date set for the hearing. The notice must state:

- 33 (1) The time and place of the hearing;
- 34 (2) The charges against the member;
- 35 (3) The specific conduct that comprises the charges;

- 1 (4) That the member is entitled to be represented by counsel or another
- 2 representative of the member's choice;
- 3 (5) That the member is entitled to call and cross-examine witnesses;
- 4 (6) That the member is entitled to require the production of evidence; and
- 5 (7) That the member is entitled to have subpoenas issued, served, and executed.

6 (E) The commission may:

- 7 (1) Compel the attendance of witnesses by issuing subpoenas;
- 8 (2) Examine witnesses under oath; and
- 9 (3) Order the production of books, papers, and other evidence by issuing
- 10 subpoenas.

11 (F) If a witness refuses to appear at a hearing of the commission after having received

12 written notice requiring the witness's attendance, or refuses to produce evidence that

13 the commission requests by written notice, the commission may file an affidavit in

14 the Circuit Court of Allen County setting forth the facts of the refusal as provided in

15 IC 36-8-3.5-17(f).

16 (G) Disobedience of a summons constitutes contempt of the circuit court from which the

17 summons has been issued. Expenses related to the filing of an affidavit and the

18 issuance and service of a summons shall be charged to the witness against whom the

19 summons has been issued, unless the circuit court finds that the action of the

20 witness was taken in good faith and with reasonable cause. In that case, and in any

21 case in which an affidavit has been filed without the issuance of a summons, the

22 expenses shall be charged to the commission.

23 (H) A decision to discipline a member may be made only if the preponderance of the

24 evidence presented at the hearing indicates such a course of action.

25 (I) A member who is aggrieved by the decision of a person or board designated to

26 conduct a disciplinary hearing under subsection (C) may appeal to the commission

27 within ten days of the decision. The commission shall on appeal review the record

28 and either affirm, modify, or reverse the decision on the basis of the record and such

29 oral or written testimony that the commission determines, including additional or

30 newly discovered evidence.

31 (J) The commission, or the designated person or board, shall keep a record of the

32 proceedings in cases of suspension, demotion, or dismissal. The commission shall

33 give a free copy of the transcript to the member upon request if an appeal is filed.

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36

1 **SECTION 3.** That this Ordinance shall be in full force and effect from and after its passage and  
2 any and all necessary approval by the Mayor.

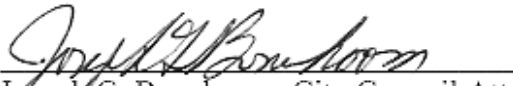
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8 Michael Barranda, Council Member

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11 Tom Freistroller, Council Member

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15 APPROVED AS TO FORM AND PROCEDURAL LEGALITY

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18 Joseph G. Bonahoom, City Council Attorney

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3 **AN ORDINANCE amending 35.11: "Promotions; Certification of Eligible Members;**  
4 **Probation; Procedures" and 35.12 "Disciplinary Actions; Grounds; Hearing; Notice;**  
5 **Requisites; Procedures; Appeal" in Chapter 35: Fire Department, of the**  
6 **Fort Wayne Municipal Code of Ordinances**  
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8 **WHEREAS**, the City of Fort Wayne Code of Ordinances ("FWCO") §§ 35.01 – 35.17  
9 promulgates the organization, operation, and powers of the Fire Merit Commission;

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11 **WHEREAS**, promotion procedures are located in FWCO 35.11;

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13 **WHEREAS**, disciplinary actions, ground, hearing, notice, requisites, procedures, and  
14 appeal are located in FWCO 35.12;

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16 **WHEREAS**, Ind. Code § 36-8-3.5-1(f) authorizes a unit that adopted a merit system  
17 under Ind. Code § 36-8-3.5-3 to amend the merit system as long as at least one-third, or two  
18 members in the case of the five member Commission, of the merit system's members are elected  
19 by the active members of the department;

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21 **WHEREAS**, current provisions within the system of discipline and promotion have  
22 unnecessarily exacerbated tensions between members of the Fire Department and its leadership;

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24 **WHEREAS**, Common Council desires to amend Section 35.11 of the FWCO in order to  
25 reflect the belief that promotion should be awarded to those members achieving the highest  
26 score; and

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28 **WHEREAS**, Common Council desires to amend Section 35.12 of the FWCO in order to  
29 more specifically outline the disciplinary options of the Fire Merit Commission and its ability to  
30 opine on the executive's decision to demote or terminate when that decision is not within the Fire  
31 Merit Commission's purview.

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33 **NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF**  
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36 **SECTION 1.** That § 35.11: "PROMOTIONS; CERTIFICATION OF ELIGIBLE MEMBERS;  
37 **PROBATION; PROCEDURES"** in Chapter 35: Fire Department shall be amended and read as  
38 follows:  
39

40 **§ 35.11 PROMOTIONS; CERTIFICATION OF ELIGIBLE MEMBERS; PROBATION;**  
41 **PROCEDURES.**

- 42  
43 (A) When a vacancy in rank occurs, the commission shall certify to the Chief of the Fire  
44 Department the three members with the highest scores on the eligibility list for that

1 particular rank. Within six months the commission shall promote the member with the  
2 highest score.

3 (B) All promotions are probationary for a period not to exceed one year. At the end of the  
4 period, a probationary member's superior shall review the member's performance and  
5 recommend to the commission that:

6 (1) The promotion be made permanent; or

7 (2) The promotion be revoked.

8 (C) The commission shall prepare a rating chart for the superior's use in making the report.  
9 The commission shall review the report and decide what action should be taken. The  
10 probationary member is entitled to appear before the commission and be heard on any  
11 matter detrimental to the member in the member's superior's report. The member is  
12 also entitled to be represented by counsel or another representative of the member's  
13 choice. If the promotion is finally revoked the member may not be returned to a rank  
14 lower than that the member held before the probationary promotion.

15 (D) Actions by the commission other than making the promotion permanent may be  
16 appealed within 30 days to the Circuit or Superior Court of Allen County, with the city  
17 being named as the sole defendant, as provided by IC 36-8-3.5-16(d).

18 **SECTION 2.** That § 35.12: "DISCIPLINARY ACTIONS; GROUNDS; HEARING; NOTICE;  
19 REQUISITES; PROCEDURES; APPEAL" in Chapter 35: Fire Department shall be amended  
20 and read as follows:  
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22 **§ 35.12 DISCIPLINARY ACTIONS; GROUNDS; HEARING; NOTICE; REQUISITES;**  
23 **PROCEDURES; APPEAL.**

24 (A) The commission may take the following disciplinary actions against a member of  
25 the Fire Department:

26 (1) Suspension with or without pay of any member with the rank of Fire Chief  
27 and below.

28 (a) In addition to the Fire Merit Commission's authority to suspend a member  
29 with or without pay, the Merit Commission shall provide an opinion to the  
30 Executive of the City on Demotion or Dismissal.

31 (2) Demotion of any member with the rank of Battalion Chief and below.

32 (3) Dismissal of any member with the rank of Battalion Chief and below.

33 If a member is suspended under this subsection, the member is entitled to the member's  
34 remuneration and allowances for insurance benefits to which the member was entitled  
35 before the suspension. In addition, the city may provide the member's allowances for any  
36 other fringe benefits to which the member was entitled before the suspension. The  
37 commission shall determine if a member of the Fire Department who is suspended in  
38 excess of five days shall continue to receive the member's salary during suspension.

1 (B) A member may be disciplined by the commission if:

- 2 (1) The member is convicted of a crime; or
- 3 (2) The commission finds the member guilty of a breach of discipline,
- 4 including:
- 5 (a) Neglect of duty;
- 6 (b) Violation of commission rules;
- 7 (c) Neglect or disobedience of orders;
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- 9 (e) Absence without leave;
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- 11 (g) Conduct injurious to the public peace or welfare;
- 12 (h) Conduct unbecoming a member; or
- 13 (i) Furnishing information to an applicant for appointment or promotion that
- 14 gives that person an advantage over another applicant.

15 (C) If the Chief of the Fire Department, after an investigation within the department,

16 prefers charges against a member of the department for an alleged breach of

17 discipline under subsection (B), including any civilian complaint of an alleged

18 breach of discipline under division (B)(2)(f), (B)(2)(g), or (B)(2)(h), a hearing

19 shall be conducted upon the request of the member. If a hearing is requested within

20 five days of the Chief preferring charges, the parties may by agreement designate a

21 hearing officer who is qualified by education, training, or experience. If the parties

22 do not agree within this five day period, the commission may hold the hearing or

23 designate a person or board to conduct the hearing, as provided in the commission's

24 rules. The designated person or board must be qualified by education, training, or

25 experience to conduct such a hearing and may not hold an upper level policy

26 making position. The hearing conducted under this subsection shall be held

27 within 30 days after it is requested by the member.

28 (D) Written notice of the hearing shall be served upon the accused member in person or

29 by a copy left at the member's last and usual place of residence at least 14 days

30 before the date set for the hearing. The notice must state:

- 31 (1) The time and place of the hearing;
- 32 (2) The charges against the member;
- 33 (3) The specific conduct that comprises the charges;
- 34 (4) That the member is entitled to be represented by counsel or another
- 35 representative of the member's choice;
- 36 (5) That the member is entitled to call and cross-examine witnesses;

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8 (F) If a witness refuses to appear at a hearing of the commission after having received  
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11 the Circuit Court of Allen County setting forth the facts of the refusal as provided in  
12 IC 36-8-3.5-17(f).

13 (G) Disobedience of a summons constitutes contempt of the circuit court from which the  
14 summons has been issued. Expenses related to the filing of an affidavit and the  
15 issuance and service of a summons shall be charged to the witness against whom the  
16 summons has been issued, unless the circuit court finds that the action of the  
17 witness was taken in good faith and with reasonable cause. In that case, and in any  
18 case in which an affidavit has been filed without the issuance of a summons, the  
19 expenses shall be charged to the commission.

20 (H) A decision to discipline a member may be made only if the preponderance of the  
21 evidence presented at the hearing indicates such a course of action.

22 (I) A member who is aggrieved by the decision of a person or board designated to  
23 conduct a disciplinary hearing under subsection (C) may appeal to the commission  
24 within ten days of the decision. The commission shall on appeal review the record  
25 and either affirm, modify, or reverse the decision on the basis of the record and such  
26 oral or written testimony that the commission determines, including additional or  
27 newly discovered evidence.

28 (J) The commission, or the designated person or board, shall keep a record of the  
29 proceedings in cases of suspension, demotion, or dismissal. The commission shall  
30 give a free copy of the transcript to the member upon request if an appeal is filed.

31 (K) Notwithstanding the provisions of this Section 35.12, any disciplinary hearing,  
32 whether held by the Fire Merit Commission, another person or board, may be  
33 attended by members of Common Council, including those held in executive  
34 session.

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37

1 **SECTION 3.** That this Ordinance shall be in full force and effect from and after its passage and  
2 any and all necessary approval by the Mayor.

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7 Michael Barranda, Council Member  
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10 Thomas Freistroffer, Council Member  
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16 APPROVED AS TO FORM AND PROCEDURAL LEGALITY  
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18 Joseph G. Bonahoom, City Council Attorney  
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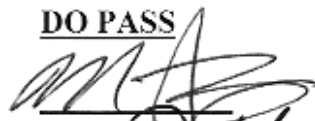

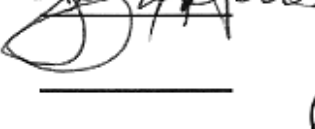
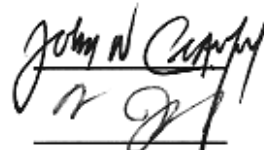
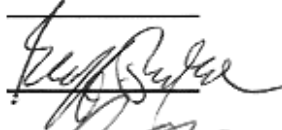
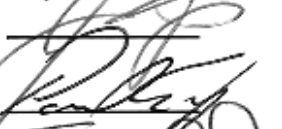
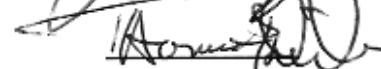
**BILL NO. G-19-12-10**

**REPORT OF COMMITTEE ON REGULATIONS  
December 17, 2019**


**Tom Freistroffer Chair**  
**Michael Barranda Co-Chair**  
**All Council Members**

An Ordinance amending 35.11: "Promotions; Certification of Eligible Members; Probation; Procedures" and 35.12 "Disciplinary Actions; Grounds; Hearing; Notice; Requisites; Procedures; Appeal" in Chapter 35: Fire Department, of the Fort Wayne Municipal Code of Ordinances

**COMMITTEE ON REGULATIONS HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance**

<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>	<u>NO REC</u>
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
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	_____	_____	_____
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	_____	_____	_____

**LANA R. KEESLING  
CITY CLERK**



Public Hearing Date: N/A

Read the first time in full and on motion by Councilman Freistroffer.

Read the second time by title and referred to the Regulations Committee.

Read the third time in full and on motion by Councilman Freistroffer, placed on passage by the following vote:

<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
ARP	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
BARRANDA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CRAWFORD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DIDIER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ENSLEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FREISTROFFER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HINES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JEHL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PADDOCK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATED: December 17, 2019

  
 \_\_\_\_\_  
 LANA R. KEESLING, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

General Ordinance No. G-19-12-10AA on the 17th day of December, 2019

  
 \_\_\_\_\_  
 LANA R. KEESLING  
 CITY CLERK

  
 \_\_\_\_\_  
 PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 20th of December 2019, at the hour of 11:10 o'clock A.M. E.S.T.

  
 \_\_\_\_\_  
 LANA R. KEESLING, CITY CLERK

Approved and signed by me this \_\_\_\_\_ day of \_\_\_\_\_

2019, at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_ E.S.T.

FORT WAYNE, INDIANA  
**RECEIVED**  
 JAN 03 2020  
 LANA R. KEESLING  
 CITY CLERK

\_\_\_\_\_  
 THOMAS C. HENRY, MAYOR