

3
4 AN **ORDINANCE** amending § 152.12 in the
5 Fort Wayne Municipal Code of Ordinances
6 **“Housing and Building Standards – Enforcement and Penalties”**
7

8
9 **WHEREAS**, Neighborhood Code Compliance ("NCC") is a department within the Division of
10 Community Development tasked with upholding the standards of residential structures within the
11 City of Fort Wayne; and

12
13 **WHEREAS**, Indiana Code requires that NCC provide notice to property owners when violations
14 have occurred; and

15
16 **WHEREAS**, there are residents within the City of Fort Wayne who are habitual offenders whose
17 offenses result in the expenditure of a substantial amount of NCC’s resources, but provide little to
18 no benefit to the City of Fort Wayne; and allow said habitual offenders circumvent enforcement
19 with no penalty; and

20
21 **WHEREAS**, Indiana courts can enter orders that provide for additional enforcement options,
22 which remove the onerous requirement of providing additional notice, and would cap the amount
23 of NCC Resources expended to police habitual offenders.

24
25
26 **NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY**
27 **OF FORT WAYNE, INDIANA,**

28
29 **SECTION 1.** Section § 152.12 ENFORCEMENT AND PENATIES, of the Fort Wayne Code is
30 amended to add a new section (E) as follows:

31 (A) *Enforcement.* Whenever, upon inspection of any residential property, the Neighborhood
32 Code Official finds that conditions or practices exist which are in violation of any provision of
33 this chapter, or the Unsafe Building Law, IC 36-7-9-1 through IC 36-7-9-29, the Code Official
34 shall give written notice in accordance with the provisions of this chapter. Unless such
35 conditions or practices are corrected within a reasonable period, to be determined by the
36 Enforcement Authority, the owner or person responsible for such property shall be subject to the
37 graduated penalty scale as outlined in the standard operating procedures of the Enforcement
38 Authority and as determined by the Safe Housing and Building Oversight Committee. ('74 Code,
39 § 14.7-31(a))

40 (B) *Notice of violation.*

41 (1) *Notice of violation concerning minimum housing standards.* If the Code Official finds
42 that a violation of any portion of this chapter exists on the property or premises, with the
43 exception of any violation falling under the realm of public health and safety, the Code Official
44 shall issue a written notice of violation to the property owner or person(s) responsible for such

1 property establishing sixty (60) days to correct the violations. Subsequent to the notice of
2 violation, the property owner or person responsible for such property and the Enforcement
3 Authority may enter into a work plan for the abatement of the violations. The work plan shall set
4 a date by which the required work shall be completed. The date established in the work plan may
5 extend beyond the sixty (60) days established in the notice of violation. The Enforcement
6 Authority may modify or rescind a work plan as warranted by the status of the violation(s) and
7 the work needed to correct same.

8 (2) *Notice of violation concerning health and safety.* If the Code Official finds that a
9 violation(s) pertaining to garbage, infestation, refuse, evidence of a clandestine laboratory,
10 existing fire hazard, occupant and/or tenant safety, and/or trash and debris as defined within this
11 chapter, or any condition deemed unsanitary, exists on the property or premises, the Code
12 Official shall issue a written notice of violation to the property owner or person(s) responsible
13 for such property, establishing no less than ten (10) days, but not to exceed twenty (20) days to
14 correct the violation(s). Unless such violation(s) are corrected within the time frame determined
15 by the Enforcement Authority, the property shall be subject to the graduated penalty scale
16 outlined in the Standard Operating Procedures of the Enforcement Authority subsequent to an
17 administrative hearing and as determined by the Safe Housing and Building Oversight
18 Committee

19 (C) *Order to repair.* The Code Official shall re-inspect the property upon the expiration of the
20 time period given in the notice of violation, or upon expiration of the time given by the
21 Enforcement Authority. If any part of the violation(s) listed in the notice of violation remain, the
22 Code Official shall issue an order requiring action pursuant to IC 36-7-9-5.

23 (D) *Order for abatement.* The Code Official shall reinspect the property upon the expiration
24 of the time period in the initial order. If any part of the violation(s) remain, the Enforcement
25 Authority may cause work to be performed by others to address such violations pursuant to IC
26 36-7-9-10 and IC 36-7-9-11.

27
28 Please refer to (H) Civil remedies below and the revision explanation sheet for clarification of
29 the following recommendation.

30 (E) *Manner of serving notice.*

31 (1) A notice of violation issued pursuant to § [152.12\(B\)](#) shall be served in accordance with
32 IC 36-7-9-25.

33 (2) A notice of an order issued under § [152.12\(D\)](#) shall be served as provided in IC 36-7-9-
34 25.

35 (F) *Emergencies.* The Enforcement Authority may take emergency action with respect to
36 unsafe premises to protect life, safety, or property pursuant to IC 36-7-9-9. Such emergency
37 action may be taken without issuing a notice of violation under § [152.12\(B\)](#) or issuing an order
38 under § [152.12\(D\)](#), but shall be limited to the action necessary to abate any immediate danger.
39 ('74 Code, § 14.7-30)

40 (G) *Civil remedies.* The Enforcement Authority may bring a civil action for a violation of this
41 chapter and/or Unsafe Building Law in the Allen County Circuit or Superior Court pursuant to

1 IC 36-7-9-17, and seek the remedies authorized by IC 36-7-9-18 through 36-7-9-22, or pursuant
2 to IC 36-1-6-4. The civil remedies provided for include injunctive relief, monetary civil
3 penalties, posting of a performance bond, appointment of a receiver, authorizing of work to be
4 performed by others, and cause action to be taken in the case of emergencies. Any civil penalty
5 imposed by the Circuit or Superior Court under IC 36-7-9-19 may be certified to the County
6 Auditor and become a special assessment as provided under IC 36-7-9-13.5. All Civil remedies
7 to be legally executed consistent with NCC policies and procedures as approved by City Legal,
8 Community Development Division Head and the Safe Housing and Building Oversight
9 Committee.

10 (H) *Deposit in Unsafe Building Fund.* Monetary civil penalties collected pursuant to this
11 chapter shall be deposited in the Unsafe Building Fund and may be used according to IC 36-7-9-
12 14(c). ('74 Code, § 14.7-8)

13 (I) Natural disaster. Structures damaged as a result of fire, flood, storm, tornado, or other
14 natural disaster, and verified by the Enforcement Authority, may be excluded from the
15 enforcement provisions of this chapter for six months. Subsequently, any property subject to this
16 subsection shall be subject to the provisions of this chapter.

17 (J) *Order to vacate; time allowed to vacate.*

18 (1) *Buildings unsafe for human occupancy.*

19 (a) Whenever a building, dwelling, dwelling unit, rooming house or rooming unit is
20 declared by the Enforcement Authority as unsafe or unfit for human occupancy, the Enforcement
21 Authority may post an order to vacate placard requiring such building to be vacated and to
22 remain vacated. Such placard shall be authorized by the Enforcement Authority. It shall contain
23 the address and phone number of the department and the date by which the occupant shall vacate
24 the building, dwelling or dwelling unit or portion thereof. The Enforcement Authority may issue
25 an order to vacate pursuant to IC 36-7-9-5 or 36-7-9-17 if the owner or occupant fails to vacate
26 the unsafe premises. ('74 Code, § 14.7-23)

27 (b) Conditions include:

28 1. Damage, decay, dilapidation, abandonment, unsanitary conditions or vermin or rodent
29 infestation which constitute a hazard to the health or safety of occupants or the public;

30 2. The lack of required sanitation, illumination, ventilation, heating, electrical, plumbing
31 or other facilities and systems adequate to protect the health and safety as to create a hazard to
32 the occupants or the public;

33 3. Conditions or defects described in IC 36-7-9-4; ('74 Code, § 14.7-22)

34 4. Any building, dwelling or dwelling unit condemned as unfit for human occupancy
35 and so designated and placarded by the Enforcement Authority, shall be vacated as ordered by
36 the Enforcement Authority pursuant to IC 36-7-9-5 and IC 36-7-9-9. ('74 Code, § 14.7-22-24)

37 (2) *Tampering with placard.* It shall be unlawful for any person to deface, remove or alter
38 any notice or placard from any structure or dwelling which has been placarded under this chapter
39 except by the express written permission of the Enforcement Authority. ('74 Code, § 14.7-25)

1 (3) *Approval required for re-occupancy.* No building or dwelling unit which has been
2 placarded as unfit for human occupancy shall again be used for human occupancy until written
3 approval is secured from, and such placard is removed by, the Enforcement Authority. The
4 Enforcement Authority shall remove such placard whenever the defect(s) upon which the
5 condemnation and placard action were based have been corrected. ('74 Code, § 14.7-26)

6 (4) *Penalties.* Any violation of IC 36-7-9-28 or any provision of this chapter for which
7 another penalty is not provided, shall, upon conviction by the court, be imposed by a penalty not
8 to exceed \$2,500 per violation. Each and every day on which the condition exists shall constitute
9 a separate and distinct violation. All penalties and costs recovered by the city pursuant to this
10 chapter shall be placed in the Unsafe Building Fund. ('74 Code, § 14.7-32)

11 (K) *Access to premises in violation of this chapter.* If the Enforcement Authority has issued
12 an Order to Vacate an unsafe building, the owner or person in possession of same may only enter
13 such building upon signing an affidavit of acknowledgment to the Enforcement Authority
14 establishing the limited purposes and time for such entry. Any unauthorized entry or use of
15 premises or structures subject to an order issued by the Enforcement Authority is subject to the
16 sanctions specified in IC 36-7-9-28.

17 (L) *Affirmative defense.* It shall be an affirmative defense to a notice and/or order issued
18 pursuant to § [152.12](#) if an owner can show, by clear and convincing evidence, that said owner
19 could not legally enter the premises in order to correct the violation at the time the notice and/or
20 order was issued.

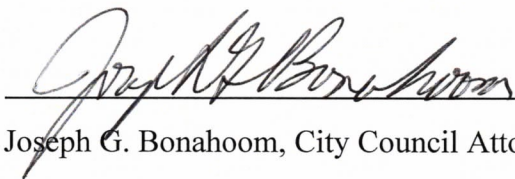
21 **SECTION 2.** That this Ordinance shall be in full force and effect after any and all necessary
22 approval by the Mayor.

23
24
25
26
27
28
29
30
31
32



Russell Jehl, Council Member

APPROVED AS TO FORM AND LEGALITY



Joseph G. Bonahoom, City Council Attorney

3
4 **AN ORDINANCE** amending § 152.12 in the
5 Fort Wayne Municipal Code of Ordinances
6 **“Housing and Building Standards – Enforcement and Penalties”**
7

8
9 **WHEREAS**, Neighborhood Code Compliance ("NCC") is a department within the Division of
10 Community Development tasked with upholding the standards of residential structures within the
11 City of Fort Wayne; and

12
13 **WHEREAS**, Indiana Code requires that NCC provide notice to property owners when violations
14 have occurred; and

15
16 **WHEREAS**, there are residents within the City of Fort Wayne who are habitual offenders whose
17 offenses result in the expenditure of a substantial amount of NCC’s resources, but provide little to
18 no benefit to the City of Fort Wayne; and allow said habitual offenders circumvent enforcement
19 with no penalty; and

20
21 **WHEREAS**, Indiana courts can enter orders that provide for additional enforcement options,
22 which remove the onerous requirement of providing additional notice, and would cap the amount
23 of NCC Resources expended to police habitual offenders.

24
25
26 **NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY**
27 **OF FORT WAYNE, INDIANA,**

28
29 **SECTION 1.** Section § 152.12 ENFORCEMENT AND PENATIES, of the Fort Wayne Code is
30 amended to add a new section (E) as follows:

31 (A) *Enforcement.* Whenever, upon inspection of any residential property, the Neighborhood
32 Code Official finds that conditions or practices exist which are in violation of any provision of
33 this chapter, or the Unsafe Building Law, IC 36-7-9-1 through IC 36-7-9-29, the Code Official
34 shall give written notice in accordance with the provisions of this chapter. Unless such
35 conditions or practices are corrected within a reasonable period, to be determined by the
36 Enforcement Authority, the owner or person responsible for such property shall be subject to the
37 graduated penalty scale as outlined in the standard operating procedures of the Enforcement
38 Authority and as determined by the Safe Housing and Building Oversight Committee. ('74 Code,
39 § 14.7-31(a))

40 (B) *Notice of violation.*

41 (1) *Notice of violation concerning minimum housing standards.* If the Code Official finds
42 that a violation of any portion of this chapter exists on the property or premises, with the
43 exception of any violation falling under the realm of public health and safety, the Official shall
44 issue a written notice of violation to the property owner, along with anyone else with a judgment,

1 Lien, Mortgage or any other property interest in the property, allowing sixty(60) days to correct
2 the violations. Subsequent to the notice of violation, the Enforcement Authority may enter into a
3 work plan for the abatement of the violations. The work plan shall set a date by which the
4 required work shall be completed. The date established in the work plan may extend beyond the
5 sixty (60) days established in the notice of violation. The Enforcement Authority may modify or
6 rescind a work plan as warranted by the significance of the violation(s) and the work needed to
7 correct the violation(s).

8 (2) *Notice of violation concerning health and safety.* If the Code Official finds that a
9 violation(s) pertaining to garbage, infestation, refuse, evidence of a clandestine laboratory,
10 existing fire hazard, occupant and/or tenant safety, and/or trash and debris as defined within this
11 chapter, or any condition deemed unsanitary, exists on the property or premises, the Code
12 Official shall issue a written notice of violation to the property owner, along with anyone else
13 with a judgment, lien , mortgage or any other property interest in the property, allowing no less
14 than ten (10) days, but not to exceed twenty (20) days to correct the violation(s). Unless such
15 violation(s) are corrected within the time frame determined by the Enforcement Authority, the
16 property shall be subject to the graduated penalty scale outlined in the Standard Operating
17 Procedures of the Enforcement Authority subsequent to an administrative hearing and as
18 determined by the Safe Housing and Building Oversight Committee

19 (C) *Order to repair.* The Code Official shall reinspect the property after the time period
20 provided in the notice of violation has expired, or upon expiration of the time given by the
21 Enforcement Authority. If any part of the violations listed in the notice of violation remain, the
22 Code Official shall issue an order requiring action pursuant to IC 36-7-9-5.

23 (D) *Order for abatement.* The Code Official shall reinspect the property after the time period
24 provided in the initial order. If any part of the violation(s) remain, the Enforcement Authority
25 may cause work to be performed by others to address such violations pursuant to IC 36-7-9-10
26 and IC 36-7-9-11.

27 (E) *Injunction Recommendation*

- 28 1. After three (3) instances during any twelve-month period from the date the first
29 notice of violation was given, where NCC has given notice of a violation and
30 opportunity to cure for a violation of this Chapter 152 of the Fort Wayne Code of
31 Ordinances, whether the repeated violation is/was cured, or after three (3) instances,
32 during any 6 month time frame from the date the first notice of violation was given
33 where NCC has given notice of a violation and opportunity to cure regarding
34 different violations, whether the violations are/were cured, the City shall be entitled to
35 injunctive relief and the Deputy Director of Neighborhood Code Compliance or
36 designee shall submit a formal, written recommendation to the City Law Office to
37 begin the process of obtaining a permanent injunction, through the appropriate court,
38 against the property owners, enjoining any and all actions or conditions which
39 constitute any of the violations for which notices were given in the time frames
40 specified. The District City Council representative and City Council Office shall be
41 provided with a copy the written injunction recommendation.
42

1 2. The City Law Office shall make the determination, in writing, of whether to pursue a
2 permanent injunction, and shall provide reasoning for that determination in writing to
3 the Deputy Director of Neighborhood Code Compliance or designee, with a copy to
4 the District City Council person and the Council Office.

5
6
7 3. The steps identified in items 1 and 2 of this Section E of Section 152.12 of the Fort
8 Wayne Code shall be repeated each time the threshold for verified violations is met.

9 (F) *Manner of serving notice.*

10 (1) A notice of violation issued pursuant to § [152.12\(B\)](#) shall be served in accordance with
11 IC 36-7-9-25.

12 (2) A notice of an order issued under § [152.12\(D\)](#) shall be served as provided in IC 36-7-9-
13 25.

14 (G) *Emergencies.* The Enforcement Authority may take emergency action with respect to
15 unsafe premises to protect life, safety, or property pursuant to IC 36-7-9-9. Such emergency
16 action may be taken without issuing a notice of violation under § [152.12\(B\)](#) or issuing an order
17 under § [152.12\(D\)](#), but shall be limited to the action necessary to abate any immediate danger.
18 ('74 Code, § 14.7-30)

19 (H) *Civil remedies.* The Enforcement Authority may bring a civil action for a violation of this
20 chapter and/or Unsafe Building Law in the Allen County Circuit or Superior Court pursuant to
21 IC 36-7-9-17, and seek the remedies authorized by IC 36-7-9-18 through 36-7-9-22, or pursuant
22 to IC 36-1-6-4. The civil remedies provided for include injunctive relief, monetary civil
23 penalties, posting of a performance bond, appointment of a receiver, authorizing of work to be
24 performed by others, and cause action to be taken in the case of emergencies. Any civil penalty
25 imposed by the Circuit or Superior Court under IC 36-7-9-19 may be certified to the County
26 Auditor and become a special assessment as provided under IC 36-7-9-13.5.

27 (I) *Deposit in Unsafe Building Fund.* Monetary civil penalties collected pursuant to this
28 chapter shall be deposited in the Unsafe Building Fund and may be used according to IC 36-7-9-
29 14(c). ('74 Code, § 14.7-8)

30 (J) *Natural disaster.* Structures damaged as a result of fire, flood, storm, tornado, or other
31 natural disaster, and verified by the Enforcement Authority, may be excluded from the
32 enforcement provisions of this chapter for six months. Subsequently, any property subject to this
33 subsection shall be subject to the provisions of this chapter.

34 (K) *Order to vacate; time allowed to vacate.*

35 (1) *Buildings unsafe for human occupancy.*

36 (a) Whenever a building, dwelling, dwelling unit, rooming house or rooming unit is
37 declared by the Enforcement Authority as unsafe or unfit for human occupancy, the Enforcement
38 Authority may post an order to vacate placard requiring such building to be vacated and to
39 remain vacated. Such placard shall be authorized by the Enforcement Authority. It shall contain
40 the address and phone number of the department and the date by which the occupant shall vacate

1 the building, dwelling or dwelling unit or portion thereof. The Enforcement Authority may issue
2 an order to vacate pursuant to IC 36-7-9-5 or 36-7-9-17 if the owner or occupant fails to vacate
3 the unsafe premises. ('74 Code, § 14.7-23)

4 (b) Conditions include:

5 1. Damage, decay, dilapidation, abandonment, unsanitary conditions or vermin or rodent
6 infestation which constitute a hazard to the health or safety of occupants or the public;

7 2. The lack of required sanitation, illumination, ventilation, heating, electrical, plumbing
8 or other facilities and systems adequate to protect the health and safety as to create a hazard to
9 the occupants or the public;

10 3. Conditions or defects described in IC 36-7-9-4; ('74 Code, § 14.7-22)

11 4. Any building, dwelling or dwelling unit condemned as unfit for human occupancy
12 and so designated and placarded by the Enforcement Authority, shall be vacated as ordered by
13 the Enforcement Authority pursuant to IC 36-7-9-5 and IC 36-7-9-9. ('74 Code, § 14.7-22-24)

14 (2) *Tampering with placard.* It shall be unlawful for any person to deface, remove or alter
15 any notice or placard from any structure or dwelling which has been placarded under this chapter
16 except by the express written permission of the Enforcement Authority. ('74 Code, § 14.7-25)

17 (3) *Approval required for re-occupancy.* No building or dwelling unit which has been
18 placarded as unfit for human occupancy shall again be used for human occupancy until written
19 approval is secured from, and such placard is removed by, the Enforcement Authority. The
20 Enforcement Authority shall remove such placard whenever the defect(s) upon which the
21 condemnation and placard action were based have been corrected. ('74 Code, § 14.7-26)

22 (4) *Penalties.* Any violation of IC 36-7-9-28 or any provision of this chapter for which
23 another penalty is not provided, shall, upon conviction by the court, be imposed by a penalty not
24 to exceed \$2,500 per violation. Each and every day on which the condition exists shall constitute
25 a separate and distinct violation. All penalties and costs recovered by the city pursuant to this
26 chapter shall be placed in the Unsafe Building Fund. ('74 Code, § 14.7-32)

27 (L) *Access to premises in violation of this chapter.* If the Enforcement Authority has issued an
28 Order to Vacate an unsafe building, the owner or person in possession of same may only enter
29 such building upon signing an affidavit of acknowledgment to the Enforcement Authority
30 establishing the limited purposes and time for such entry. Any unauthorized entry or use of
31 premises or structures subject to an order issued by the Enforcement Authority is subject to the
32 sanctions specified in IC 36-7-9-28.

33 (M) *Affirmative defense.* It shall be an affirmative defense to a notice and/or order issued
34 pursuant to § [152.12](#) if an owner can show, by clear and convincing evidence, that said owner
35 could not legally enter the premises in order to correct the violation at the time the notice and/or
36 order was issued.


37 **SECTION 2.** That this Ordinance shall be in full force and effect after any and all necessary
38 approval by the Mayor.

1
2
3
4
5
6
7
8
9
10
11



Russell Jehl, Council Member

APPROVED AS TO FORM AND LEGALITY



Joseph G. Bonahoom, City Council Attorney








BILL NO. G-23-09-16

**REPORT OF COMMITTEE ON REGULATIONS
December 12, 2023**

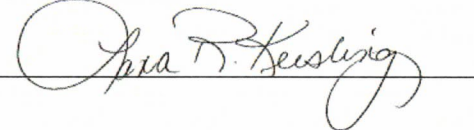
**Sharon Tucker Chair
Tom Freistroffer Co-Chair
All Council Members**

An Ordinance amending § 152.12 in the Fort Wayne Municipal Code of Ordinances "Housing and Building Standards – Enforcement and Penalties"

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

<u>COUNCIL MEMBER</u>	<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>
ARP			
CHAMBERS			
DIDIER			
ENSLEY			
FREISTROFFER			
HINES			
JEHL			
PADDOCK			
TUCKER			

**LANA R. KEESLING
CITY CLERK**



Public Hearing Date: N/A

Read the first time in full and on motion by Councilperson Tucker.

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

Read the third time in full and on motion by Councilperson Tucker, 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 type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
CHAMBERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DIDIER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ENSLEY	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PADDOCK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TUCKER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATED: December 12, 2023



 LANA R. KEESLING, CITY CLERK

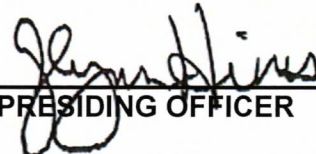
Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

General Ordinance No. G-23-09-16-AA on the 12th day of December, 2023

ATTEST:



 LANA R. KEESLING
 CITY CLERK



 PRESIDING OFFICER

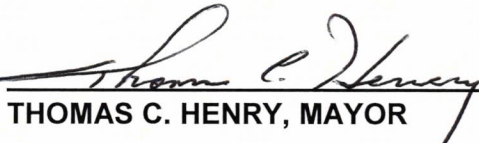
Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 15th of December 2023, at the hour of 2:05 o'clock P.M. E.S.T.



 LANA R. KEESLING, CITY CLERK

Approved and signed by me this 18TH day of December 2023, at the hour of 10:00 o'clock Am . E.S.T.

FORT WAYNE, INDIANA
RECEIVED
 DEC 18 2023
 LANA R. KEESLING
 CITY CLERK



 THOMAS C. HENRY, MAYOR