

ORDINANCE NO. 16, 2019

**An Ordinance to Amend the Municipal Code of the City of Valparaiso
Concerning Prevention of Certain Contractor Fraud**

WHEREAS, the Common Council (“Council”) of the City of Valparaiso, Indiana (“City”) has been advised that amendments to the Municipal Code of the City (“Code”) are required for the purpose of preventing fraud on the part of construction contractors in the City; and

WHEREAS, the Council, being duly advised, desires to enact the following amendments to the Code for these purposes.

THEREFORE, BE IT ORDAINED by the Common Council of the City of Valparaiso, Indiana as follows:

SECTION ONE: The Municipal Code of the City of Valparaiso, Indiana (“Code”) is hereby amended in Chapter 150 on “*BUILDING REGULATIONS*” by adding the following new subsection to §150.06 entitled “*SPECIAL REGULATIONS FOR CERTAIN CONTRACTORS:*”

(A) For the purpose of this subsection §150.06, the term “contractor” shall have the meaning as provided in Section §150.01(D). Each building permit issued for the construction, reconstruction, remodeling, renovation, repair, maintenance activity, or demolition of any commercial building or structure, or residential building/development containing at least **five (5) dwelling units**, provided that the cost of the work inclusive of materials and labor has a reasonable estimated value of more than **\$250,000.00**, shall be subject to the following additional conditions, qualifications and requirements at all times during the contractor’s performance of work on the project:

(1) The contractor has not been excluded, barred or suspended from submitting a bid or being awarded a contract to perform construction work by any federal, state, or local government agency or instrumentality in the **three (3) years** preceding application for the building permit for violation of any law or regulation requiring the provision of workers compensation insurance to persons working for or under the control of the contractor as the law may require, misclassifying employees as independent contractors, failure to pay, when due, employer payroll taxes or employee income tax withholding, failure to comply with

wage and hour laws, prompt payment law, or prevailing wage laws;

(2) No court or governmental agency has found or determined in the **three (3) years** preceding application for the building permit, the contractor to be in violation of any law or regulation requiring the provision of workers compensation insurance to persons working for or under the control of the contractor as the law may require, misclassifying employees as independent contractors, failure to pay, when due, employer payroll taxes or employee income tax withholding, failure to comply with wage and hour laws, prompt payment law, or prevailing wage laws;

(3) The contractor must obtain and maintain appropriate workers compensation insurance coverage for its employees as required by I.C. §22-3-5-1, *et. seq.*, and provide a certificate evidencing such insurance coverage to the Building Commissioner to be maintained as a public record;

(4) The contractor must properly classify employees as employees rather than independent contractors and treat them as employees for purposes of complying with minimum wage and overtime compensation, worker's compensation insurance coverage, unemployment taxes, social security taxes, and state and federal income tax withholding;

(5) The contractor must maintain detailed written payroll records and provide such records, upon written request to the Building Commissioner or his/her designee, within five (5) business days of the contractor's receipt of the request;

(6) The contractor must comply with I.C. 22-2, *et. seq.*, with respect to the timely payment of wages; and

(7) If required by law, the contractor must timely pay contributions to the unemployment insurance benefit fund established by I.C. §22-4-26-1.

(B) An owner of property who applies for a permit covered by this subsection shall use his or her best efforts to require that all contractors performing construction work on the

property comply with the foregoing requirements of this subsection. Consistent with Section 150.01 (O), the Building Commissioner may suspend or revoke the registration of any contractor upon a determination that the contractor failed to comply with any one or more of the requirements in subsection (A). Upon suspension or revocation of the contractor's registration, contractor shall cease all work until further notice by the Building Commissioner. The Building Commissioner may withdraw the suspension or revocation of the contractor's registration when he or she determines that all violations by the contractor have been satisfactorily remedied. As provided in Section 150.01(P), any contractor that has its registration suspend or revoked shall have the right to appeal such determination with the Board of Public Works and Safety.

(C) Consistent with Section 150.01(J), any person may file a complaint concerning the possible violation of the requirements of subsection (A). Each such complaint shall be made in writing, signed by the complaining party and affirmed upon the complainant's personal knowledge or belief under penalty of perjury. Any complaint may also include documents supportive of such complaint. The complaint shall be filed with the office of the Building Commissioner who shall cause due inquiry or investigation to be made by himself or herself or through the Commissioner's designee. Each registered contractor agrees to produce documents or records germane to the issues raised in a written complaint to the Building Commissioner within five (5) business days of the Commissioner's written request. Any information provided shall not include any employee addresses, social security numbers and date of birth. Absent any law to the contrary, the complaint and any documents collected as part of the Building Commissioner's investigation shall be considered Public Records under the Indiana Public Records Act. In the event that the Building Commissioner determines the contractor has failed to comply with any one or more of the requirements in subsection (A), the Building Commissioner may suspend or revoke the registration of the contractor. Upon suspension or revocation of the contractor's registration, contractor shall cease all work until further notice by the Building Commissioner. The Building Commissioner may withdraw the suspension or revocation of the contractor's registration when he or she determines that all violations by the contractor have been satisfactorily remedied. As provided in Section 150.01(P), any contractor that has its registration suspend or revoked shall have the right to appeal such determination with the Board of Public Works and Safety. In addition, the person who filed the complaint may also appeal the

decision of the Building Commissioner to the Board of Public Works and Safety. Any appeal must be received by the Building Commissioner within thirty (30) days of the decision of the Building Commissioner.

(D) Upon receipt of a timely appeal, the matter will be considered by the Board of Public Works and Safety at a public meeting where interested parties will be given an opportunity to speak and submit evidence. Pending review by the Board of Public Works and Safety, any suspension or revocation of the contractor's registration shall remain in place consistent with subsection (B). If the Board finds that one or more violations have occurred, the Board may suspend or revoke the registration of the contractor and shall turn over any documents obtained in the matter to State or Federal prosecutorial authorities for further investigation or prosecution. In addition, if the Board finds that the individual filing the Complaint provided false or materially misleading information and filed a complaint for the purpose of harassment or other reasons inconsistent with this Ordinance, the Board may assess a fine in an amount not to exceed \$1,500 plus any actual expenses incurred by the City in investigating the allegations in the complaint. The Board may also direct the City Attorney to refer the matter to the Porter County Prosecutor for review.

(E) Pursuant to Section 155.19, the Building Commissioner has the right to issue a stop-work order. If, as part of the Building Commissioner's review of information under subsection (B) and/or a complaint under subsection (C), it is determined that additional contractors that previously worked on the project or are currently working on the project may also be in violation of subsection (A), the Building Commissioner may issue a stop-work order until such time as assurances can be provided that additional violations of subsection (A) will not occur.

(F) A contractor found to have violated the conditions and requirements of subsection (A) may have its registration with the City of Valparaiso revoked for a period not exceeding **three (3) years** from the date of such determination.

SECTION TWO: All ordinances or portions thereof in effect prior to the effective date and in conflict with the provisions of this ordinance are hereby repealed.

SECTION THREE: This ordinance shall be in full force and effect from and after its passage in the manner required by law.

ALL OF WHICH is PASSED and ADOPTED by the Common Council of the City of Valparaiso, Indiana on this ____ day of _____, 2019.

PRESIDING OFFICER

ATTEST: _____
 , Clerk-Treasurer

PRESENTED by me to the Mayor of the City of Valparaiso on the ____ day of _____, 2019 at the hour of _____.

 , Clerk-Treasurer

APPROVED, EXECUTED and RETURNED by me to the Common Council of the City of Valparaiso on this ____ day of _____, 2019.

 , Mayor

ATTEST: _____
 , Clerk-Treasurer