

AN ORDINANCE AMENDING THE MUNICIPAL CODE
OF THE CITY OF LA PORTE CONCERNING
PREVENTION OF CERTAIN CONTRACTOR FRAUD

WHEREAS, the Common Council of the City of La Porte, Indiana has been advised that the creation of a new Ordinance in the Municipal Code of the City of La Porte is required for the purpose of preventing fraud on the part of construction contractors in the City; and

WHEREAS, the Common Council, being duly advised, desires to enact the following Ordinance to the Municipal Code of the City of La Porte for these purposes.

NOW, THEREFORE, BE IT, AND IT IS HEREBY ORDAINED by the Common Council of the City of La Porte, Indiana as follows:

SECTION I: The Municipal Code of the City of La Porte, Indiana is hereby amended in Chapter 10. BUILDINGS AND BUILDING REGULATIONS; Article II. Building Code, by adding the following section:

Section 10-47. Special Regulations For Certain Contractors.

- (a) 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 for a residential building/development 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 City Engineer 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 City Engineer or his/her designee, within five (5) business days of the contractor's receipt of the request;
 - (6) The contractor must comply with IND. CODE § 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 IND. CODE § 22-4-26-1.
- (b) An owner of property who applies for a permit covered by this section 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 section. Consistent with Section 10-35(b) the City Engineer 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 Section 10-47(a). Upon suspension or revocation of the contractor's registration, contractor shall cease all work until further notice by the City Engineer. The City Engineer 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 10-35(c), any contractor that has its registration suspended or revoked shall have the right to appeal such determination with the Board of Public Works and Safety.

- (c) Any person may file a complaint concerning the possible violation of the requirements of Section 10-47(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 City Engineer who shall cause due inquiry or investigation to be made by himself or herself or through the City Engineer's designee. Each registered contractor agrees to produce documents or records germane to the issues raised in a written complaint to the City Engineer within five (5) business days of the City Engineer'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 City Engineer's investigation shall be considered Public Records under the Indiana Public Records Act. In the event that the City Engineer determines the contractor has failed to comply with any one or more of the requirements in Section 10-47(a), the City Engineer 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 City Engineer. The City Engineer 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 10-35(b), any contractor that has its registration suspended 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 City Engineer to the Board of Public Works and Safety. Any appeal must be filed with the Clerk-Treasurer within thirty (30) days of the decision of the City Engineer.
- (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 Section 10-47(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

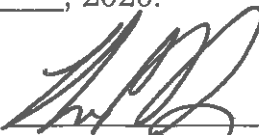
misleading information and filed a complaint for the purpose of harassment or other reasons inconsistent with this Ordinance, the Board may assess a fine in an amount not to exceed \$2,500.00 plus any actual expenses incurred by the City of La Porte in investigating the allegations in the complaint. The Board may also direct the City Attorney to refer the matter to the La Porte County Prosecutor for review.

- (e) Pursuant to Section 10-40(a), the City Engineer has the right to issue a stop-work order. If, as part of the City Engineer's review of information under Section 10-47(b) and/or a complaint under Section 10-47(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 Section 10-47(a), the City Engineer may issue a stop-work order until such time as assurances can be provided that additional violations of Section 10-47(a) will not occur.
- (f) A contractor found to have violated the conditions and requirements of Section 10-47(a) may have its registration with the City of La Porte revoked for a period not exceeding three (3) years from the date of such determination.
- (g) Any contractor that has its registration revoked under Section 10-47(f) may seek reinstatement of its registration upon expiration of the term imposed by the Board of Public Works and Safety. Any reinstatement shall be conditioned on the contractor providing payroll records, proof of insurance and other documentation reasonably requested by the City Engineer for each future project to ensure that the activities that caused the registration revocation under Section 10-47(f) is not repeated.

SECTION II: 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 III: This ordinance shall be in full force and effect upon its passage, approval by the Mayor and publication as required by law.

PASSED AND ADOPTED by the Common Council of the City of La Porte, Indiana, this 27th day of January, 2020.



Thomas R. Dermody, Mayor

ATTEST:



Courtney P. Parthun, Clerk-Treasurer

APPROVED by me this 27th day of January, 2020.



Thomas P. Dermody, Mayor

ATTEST:



Courtney P. Parthun, Clerk-Treasurer