

BILL NO. G-13-06-07

ORDINANCE NO. G-_____

**AN AMENDMENT TO THE FORT WAYNE CODE OF
ORDINANCES
CHAPTER 32, COMMON COUNCIL,
BOARDS AND COMMISSIONS ADDING NEW SECTION
32.87**

WHEREAS, Indiana Code 5-16-7 states that “any firm, individual, partnership, limited liability company or corporation that is awarded a contract by the state, a political subdivision, or a municipal corporation for the construction of a public work, and any subcontractor of the construction, shall pay [. . .] a scale of wages that may not be less than the common construction wage”; and

WHEREAS, the City of Fort Wayne and its instrumentalities are subject to the provision of the common construction wage law; and

WHEREAS, the Indiana Code provides that the common construction in a county shall be ascertained by a five (5) member committee “set up” by the “awarding governmental agency”; and

WHEREAS, the Indiana Code provides that two (2) of the members of the five (5) members shall be appointed as follows:

“One (1) person representing industry, to be named by the awarding agency,” and,

“One (1) taxpayer who pays the tax that will be the funding source for the project and resides in the county where the project is located. The owner of the project shall make the appointment under this subdivision.” and;

WHEREAS, Indiana Code 5-16-7 does not address how the “awarding governmental agency” or “owner of the project” is to designate its appointees. That is, the statute does not dictate what the internal policy or procedure of the “awarding

1 agency” or the “owner of the project” in making the appointments as required at IC
2 5-16-7-1 (b)(2) and IC 5-16-7-1 (b)(4); and

3 WHEREAS, in the absence of a specific local ordinance adopted by the
4 legislative body of the local governmental unit and signed by the executive of the
5 local governmental unit there have emerged practices and conventions regarding
6 appointment which are not detailed by either statute or ordinance of the local
7 governmental unit; and

8 WHEREAS, a clear reading of the statute reveals no bar to a legislative body
9 of a local governmental unit adopting an ordinance delineating a uniform practice for
10 how the common wage appointees are selected by the unit when such unit is the
11 “awarding agency” or “owner of the project”; and

12 WHEREAS, the Indiana Home Rule Statute and the wording of IC 5-16-7
13 invite local legislative bodies to clarify the policy and procedure of the manner of
14 appointment; and

15 WHEREAS, the interests of taxpayers would be served by the clarification of
16 the policy and procedure of the manner of appointment by local units of government;
17 and

18 WHEREAS, there has been discussion among members of the Fort Wayne
19 Common Council of adopting an ordinance which would designate the Common
20 Council to appoint the taxpayer member (IC 5-16-7-1 (b)(4) of the common
21 construction wage committee and the Executive to appoint the person representing
22 industry (IC 5-16-7-1 (b)(2); and

23 WHEREAS, other constructions available under the law could include the
24 legislative body appointing both members or the Executive appointing both
25 members; but

WHEREAS, the Common Council is the fiscal body of the City of Fort Wayne; is charged with representing the interests of taxpayers; and it would be appropriate for the Common Council to appoint the taxpayer member.

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

SECTION 1. That Section 32.87, “**Procedures for Appointment to Common Construction Wage Committee**,” is added to Chapter 32, Common Council Boards and Commissions, of the Fort Wayne Code of Ordinances. Section 32.87 is adopted as follows:

§32.87 PROCEDURES FOR APPOINTMENT TO COMMON
CONSTRUCTION WAGE COMMITTEE

A. This ordinance applies to the City of Fort Wayne, any City owned or operated utility, any Board or Commission created by under the purview of and/or which receives funding from or under the City of Fort Wayne's budget any other subsidiary entity of the City of Fort Wayne (hereinafter all of the foregoing Boards, Commissions, Utilities, etc., shall collectively be referred to as "The City of Fort Wayne") in all cases where the City of Fort Wayne is responsible for a project for which a Common Construction Wage Committee is to be constituted pursuant to Indiana Code 5-16-7, then the City of Fort Wayne shall be considered the "awarding agency" and the "owner of the project" as said terms are defined in Indiana Code 5-16-7.

B. When and in the event that a Common Construction Wage Committee is to be constituted by the City of Fort Wayne pursuant to Indiana Code 5-16-7 to ascertain the common construction wage prior to the advertising of contracts subject to the provisions of Indiana Code 5-16-7, that appointment of the members under IC 5-16-7-1 (b)(2) and IC 5-16-7-1 (b)(4) shall be made as follows:

- i. The City Executive shall appoint the member as required under IC 5-16-7-1 (b)(2) to represent industry
 - ii. The Common Council shall appoint the member as required under IC 5-16-7-1 (b)(4) to represent a taxpayer who pays the tax that will be the funding source for the project and resides in the county where the project is located.
- That each member as appointed under IC 5-16-7 (b)(2) and IC 5-16-7-1 (b)(4) shall be provided a properly executed and dated evidence of appointment to the Common Construction Wage Committee meeting for which that person was appointed and each member so appointed will present a copy of that evidence of appointment to the Committee to become a part of the record of that Committee.

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

Mitch V. Harper, Council Member

Tom Smith, Council Member

APPROVED AS TO FORM AND LEGALITY:

Joseph G. Bonahoom, Attorney for City Council