

**A RESOLUTION approving a Waiver of Noncompliance
for a Late-Filed Compliance with Statement of Benefits
Personal Property Improvements (Form CF-1/PP) for
3810 Fourier Drive, (CNC Industries, Inc.) under
Confirming Resolution R-68-08**

WHEREAS, Common Council has previously designated and declared by Declaratory Resolution and Confirming Resolution property at 3810 Fourier Drive for CNC Industries, Inc. (Confirming Resolution R-68-08) an economic revitalization area under Sections 153.13-153.24 of the Municipal Code of the City of Fort Wayne, Indiana, and I.C. 6-1.1-12.1; and

WHEREAS, the original Statement of Benefits forms (SB-1/PP and SB-1/Real Property) and economic revitalization area designation application submitted by CNC Industries, Inc. and approved under Confirming Resolution R-68-08 was for \$2,250,000 in personal property improvements and \$1,500,000 in real property improvements; and

WHEREAS, installation of the personal property for CNC Industries, Inc. was completed in 2009; and

WHEREAS, CNC Industries, Inc. did not file for economic revitalization area deduction on the real property improvements; and

WHEREAS, CNC Industries, Inc. was required to file under I.C. 6-1.1-12.1 and Section 153.21 of the Fort Wayne Code of Ordinances, a Compliance with Statement of Benefits Personal Property (Form CF-1/PP) with the Allen County Assessor and the City of Fort Wayne; and

WHEREAS, Common Council has previously determined on June 24, 2014 under resolution R-35-14 that CNC Industries, Inc. failed to substantially comply with I.C. 6-1.1-12.1 et seq. and Section 153.21 of the Fort Wayne Code of Ordinances for not filing a Compliance with Statement of Benefits Personal Property (Form CF-1/PP) or a corrective filing due May 15, 2014; and

WHEREAS, Common Council pursuant to I.C. 6-1.1-12.-5.9, directed the Fort Wayne Community Development Division to prepare and mail written notice to CNC Industries, Inc. stating the reasons for council's determination of substantial non-compliance and a date, time and place of the hearing for the purpose of further consideration of each owner's circumstances; and

WHEREAS, Common Council also directed CNC Industries, Inc. to apply for and file a Waiver of Non-Compliance pursuant to either I.C. 6-1.1-12.1-9.5 or I.C. 6-1.1-12.1-11.3(a)(5) as may be applicable, and request a waiver by Common Council; and

WHEREAS, CNC Industries, Inc. has properly filed its waiver of non-compliance and Compliance with Statement of Benefits form (CF-1/PP) on August 1, 2014 with the Community Development Division of the City of Fort Wayne, therefore Common Council shall allow the waiver of non-compliance process to proceed and will make a compliance or non-compliance determination and otherwise consider abatement termination issues at a subsequent hearing as part of its determination of CNC Industries, Inc.'s waiver request and application; and

WHEREAS, CNC Industries, Inc.'s approved Statement of Benefits (SB-1) form specified the following:

- 60 full-time jobs would be retained
- 20 full-time jobs would be created by December 2009
- \$2,000,000 in annual payroll for retained jobs
- \$650,000 in annual payroll would be generated by the created jobs

WHEREAS, CNC Industries, Inc.'s 2014 Compliance with Statement of Benefits (CF-1) form filing stated the following:

- 45 jobs were retained
- zero jobs were created;
- \$1,811,053 in annual payroll for the 45 jobs retained
- \$0 in annual payroll created; and

WHEREAS, Common Council designated the City of Fort Wayne Community Development Division as the entity for the administration, application, processing and monitoring of Economic Revitalization Areas under Section 153.13 of the Municipal Code of the City of Fort Wayne; and

WHEREAS, Common Council has defined substantial compliance under Section 153.21 of the Municipal Code of the City of Fort Wayne as:

1. Meeting 75% or more of the numbers of full-time and/or part-time jobs stated to be created or retained as delineated in the original Statement of Benefits Form (SB-1) approved by Common Council; and
2. Meeting 75% or more of the total payroll stated to be created or retained as delineated in the original Statement of Benefits Form (SB-1) approved by Common Council; and

WHEREAS, meeting 75% of the 60 retained jobs means retaining 45 jobs; and

WHEREAS, meeting 75% of the 20 jobs to be created means creating 15 jobs; and

WHEREAS, meeting 75% of the \$2,000,000 in retained annual payroll means \$1,500,000 in annual payroll retained; and

WHEREAS, meeting 75% of the \$650,000 in annual payroll to be created means \$487,500 in annual payroll created; and

WHEREAS, I.C. 6-1.1-12.1-9.5 and I.C. 6-1.1-12.1-11.3 permit noncompliance events such as the untimely filing of an application, statement of benefits, or another document required to be filed under I.C. 6-1.1-12.1; and

WHEREAS, a public hearing of the Common Council has been held on the waiver.

WHEREAS, CNC Industries, Inc. **appeared/failed to appear** at the hearing.

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

SECTION 1a. CNC Industries, Inc. failed to appear and otherwise testify and therefore Council confirms its determination of June 24, 2014 that CNC Industries, Inc. has failed to substantially comply pursuant to IC 6-1.1-12.1 and Section 153.21 of the Municipal Code of the City of Fort Wayne for its failure to create 75% of the 20 jobs that stated that would be created and create 75% of the annual payroll or \$650,000 in that CNC Industries, Inc. created zero jobs and zero annual payroll. Council therefore finds that CNC Industries, Inc. has failed to substantially comply and said failure was not caused by factors outside of CNC Industries, Inc.'s control. As a result of said failure, CNC Industries, Inc.'s deduction/abatement under R-68-08 is hereby terminated.

Or

SECTION 1b. That CNC Industries, Inc. appeared and testified at the hearing and from its testimony it was determined that notwithstanding CNC Industries, Inc.'s failure to substantially comply by its failure to create 75% of the 20 jobs that stated that would be created and create 75% of the annual payroll or \$650,000, that Company did not make reasonable efforts to substantially comply with the statement of benefits. Council therefore finds that CNC Industries, Inc. has failed to substantially comply and said failure was not caused by factors outside of CNC Industries, Inc.'s control. As a result of said failure, CNC Industries, Inc.'s deduction/abatement under R-68-08 is hereby terminated.

Or

SECTION 1c. That CNC Industries, Inc. appeared and testified at the hearing and from its testimony it was determined that notwithstanding CNC Industries, Inc.'s failure to substantially comply by its failure to create 75% of the 20 jobs that stated that would be created and create 75% of the annual payroll or \$650,000, that Company did make reasonable efforts to substantially comply with the statement of benefits and CNC Industries, Inc.'s failure to substantially comply was caused by factors beyond the control of CNC Industries, Inc.'s. Therefore the continuation of CNC Industries, Inc.'s deduction/abatement under R-68-08 is hereby approved.

SECTION 2. That, Common Council hereby waives all clerical and technical errors and nonconformities that are waiveable under State and local law, including without limitation those errors and nonconformities described in I.C. 6-1.1-12.1-9.5 and I.C. 6-1.1-12.1-11.3.

SECTION 3. As authorized by I.C. 6-1.1-12.1-9.5(d), the Common Council will permit CNC Industries, Inc. to continue to receive the economic revitalization area personal property deductions remaining under R-68-08.

SECTION 4. The Allen County Auditor and Allen County Assessor shall be supplied with a copy of this Resolution, upon passage. This resolution shall have no effect on the assessed value, economic revitalization area deductions, or taxes payable with respect to CNC Industries, Inc.'s personal property.

SECTION 5. That, this Resolution shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Member of Council

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney