

BILL NO. R-18-07-18

RESOLUTION NO. R-\_\_\_\_\_

**A RESOLUTION determining SUBSTANTIAL  
COMPLIANCE OR NON-COMPLIANCE with  
Statement of Benefits (CF-1) form filing for 2018  
for FXI, Inc. for property at 3005 Commercial  
Road, Fort Wayne, IN 46809 under Confirming  
Resolution R-40-11 with an "Economic  
Revitalization Area" approved under I.C. 6-1.1-12.1**

**WHEREAS**, Common Council has previously designated and declared by Declaratory Resolution and Confirming Resolution with approved Statement of Benefits (hereinafter "SB-1") forms, certain property for **FXI, Inc.** as 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**, property owners whose SB-1 form was approved after July 1, 1991 who file a deduction application under Sections 3 and 4.5 of I.C. 6-1.1-12.1 and Section 153.21 of the Municipal Code of the City of Fort Wayne, Indiana, must file a Compliance with Statement of Benefits Form (hereinafter "CF-1") with the City of Fort Wayne and in some cases either the Allen County Auditor, the Allen County Assessor, or both, showing information on the extent to which there has been compliance with the approved SB-1 form for the project; and

**WHEREAS**, **FXI, Inc.** has filed CF-1 forms with the **City of Fort Wayne** and the **Allen County Assessor**; and

**WHEREAS**, **FXI, Inc.** approved SB-1 form stated that **180** full-time jobs would be retained by **January 31, 2011**; and

**WHEREAS**, **FXI, Inc.** approved SB-1 form stated **\$12,877,524** in annual payroll would be retained for the **180** full-time retained jobs; and

**WHEREAS**, **FXI, Inc.** **2018** CF-1 form filing stated that **140** jobs were retained and; and

**WHEREAS**, **FXI, Inc.** **2018** CF-1 form filing stated **\$8,000,000** in annual payroll for the **140** jobs retained; and

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

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

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

13           **WHEREAS**, meeting 75% of the **180** full-time jobs retained means retaining  
14 **135** jobs; and

15           **WHEREAS**, meeting 75% of the **\$9,658,145** in retained annual payroll  
16 means **\$9,658,145** in retained annual payroll; and

17           **WHEREAS**, Common Council may determine not later than forty-five (45)  
18 days after receipt of the CF-1 form that **FXI, Inc.** has either failed to substantially  
19 comply or has substantially complied with the original SB-1 form approved by  
20 Common Council; and

21           **WHEREAS**, Common Council made a determination on **June 26, 2018** that  
22 **FXI, Inc.** was not in substantial compliance as a result of its failure to retain at least  
23 **135** jobs and at least **\$9,658,145** in annual payroll retained, and that the failure to  
24 substantially comply was not caused by factors beyond the control of **FXI, Inc.**; and

25           **WHEREAS**, Council directed the Community Development Division to mail  
26 written notice to **FXI, Inc.** explaining the reasons for Council's determination and a  
27 date, time, place of a hearing to be conducted by Council for the purpose of further  
28 considering **FXI, Inc.**'s compliance with Statement of Benefits; and

29           **WHEREAS**, the aforementioned notice was properly prepared and served  
30 upon **FXI, Inc.**; and

**WHEREAS**, **FXI, Inc. [appeared/failed to appear]** before Common Council  
to provide additional information concerning compliance.

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

3                   **SECTION 1.** That, Common Council finds that the CF-1 form filed by **FXI,**  
4                   **Inc.** with an approved Economic Revitalization Area for **2018** are not in substantial  
5                   compliance pursuant to I.C. 6-1.1-12.1 and Section 153.21 of the Municipal Code of  
6                   the City of Fort Wayne for failure to retain 75% of the **180** jobs or **135** jobs that were  
7                   stated that would be retained and retain 75% of the **\$12,877,524** in annual payroll  
8                   or **\$9,658,145** that was stated that would be generated by the retained jobs.

9                   **SECTION 2a.** **FXI, Inc.** failed to appear and otherwise testify and therefore  
10                  Council confirms its determination of **June 26, 2018** that **FXI, Inc.** has failed to  
11                  substantially comply pursuant to IC 6-1.1-12.1 and Section 153.21 of the Municipal  
12                  Code of the City of Fort Wayne as detailed in Section 1 above. Council therefore  
13                  finds that **FXI, Inc.** has failed to substantially comply and said failure was not  
14                  caused by factors outside of **FXI, Inc.**'s control. As a result of said failure, **FXI,**  
15                  **Inc.**'s deduction/abatement under **R-40-11** is hereby terminated

16                  **SECTION 2b.** That **FXI, Inc.** appeared and testified at the hearing and from  
17                  its testimony it was determined that notwithstanding **FXI, Inc.**'s failure to  
18                  substantially comply as detailed in Section 1 above that **FXI, Inc.** did make  
19                  reasonable efforts to substantially comply with the statement of benefits and **FXI,**  
20                  **Inc.**'s failure to substantially comply was caused by factors beyond the control of  
21                  **FXI, Inc.**. Therefore, the continuation of **FXI, Inc.**'s deduction/abatement under **R-**  
22                  **40-11** is hereby approved.

23                  **SECTION 2c.** That **FXI, Inc.** appeared and testified at the hearing and from  
24                  its testimony it was determined in addition to **FXI, Inc.**'s failure to substantially  
25                  comply as detailed in Section 1 above, that **FXI, Inc.** did not make reasonable  
26                  efforts to substantially comply with the statement of benefits and **FXI, Inc.**'s failure  
27                  to substantially comply was not caused by factors beyond the control of **FXI, Inc.** As  
28                  a result of said failure, **FXI, Inc.**'s deduction/abatement under **R-40-11** is hereby  
29                  terminated.

30                  **SECTION 3.** That, this Resolution shall be in full force and effect from and  
after its passage and any and all necessary approval by the Mayor.

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Member of Council

APPROVED AS TO FORM A LEGALITY

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Joseph G. Bonahoom, Attorney for Common Council

Admn. Appr. \_\_\_\_\_

DIGEST SHEET

**TITLE OF ORDINANCE: Resolution Confirming Substantial Compliance or Non-Compliance with a Statement of Benefits (SB-1) for 2016**

**DEPARTMENT REQUESTING ORDINANCE: Community Development Division**

**SYNOPSIS OF ORDINANCE: This resolution confirms that Compliance with Statement of Benefits (CF-1) Form filings made by FXI, Inc. in May 2018 with an approved economic revitalization area are either in substantial compliance or non-compliance pursuant to both Council policy and Indiana law.**

**EFFECT OF PASSAGE: Potential retention or loss of economic revitalization area deduction (property tax abatement/phase-in).**

**EFFECT OF NON-PASSAGE:**

**MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS): No expenditures of public funds required.**

**ASSIGNED TO COMMITTEE (PRESIDENT): Geoff Paddock and Jason Arp**