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5 **AN ORDINANCE inserting “§ 37.05: Notice to Common**
6 **Council of New, Non-Appropriated Revenue Funds Prior to**
7 **Expenditure” in Chapter 37: Finance and Revenue, of the**
8 **Fort Wayne Municipal Code of Ordinances**
9

10 WHEREAS, the City of Fort Wayne is incorporate in the American tradition of distinct
11 and co-equal branches of government, providing checks and balances; and
12

13 WHEREAS, the Mayor is the Executive and therefore runs or otherwise leads the
14 Executive Branch and the Common Council is the Legislative branch for the City of Fort Wayne;
15 and,
16

17 WHEREAS, the Common Council is designated by State statute as the fiscal body; and,
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19 WHEREAS, State statutes mandate annual budgeting for fiscal matters through checks
20 and balances of the Mayor and the Common Council, wherein the Mayor/Executive Branch
21 proposes a budget. Council may amend the budget by making budget cuts only and then
22 approves the budget as so amended and subsequently the Mayor must sign off on the amended
23 budget; and,
24

25 WHEREAS, as part of the budget process, both branches approve an appropriation
26 measure which appropriates the City’s revenues from real estate tax and other tax sources for use
27 in funding the budget so approved; and,
28

29 WHEREAS, appropriations in any given year over and above those approved in the
30 initial budget process must be proposed by the Mayor/Executive and approved by the Common
31 Council/Legislative Branch along with a corresponding amendment to the budget; and,
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33 WHEREAS, the budget and subsequent amendments must be sent to the Indiana
34 Department of Local Government Finance (“DLGF”); and,
35

36 WHEREAS, the appropriation and budgeting system is designed to prevent either the
37 Mayor/Executive or the Common Council/Legislative Branch from unilaterally spending or
38 appropriating significant sums of taxpayer funds and other City revenues without the approval
39 and oversight from the other. Further, the system requires that appropriations and other spending
40 initiatives be made public and transparent prior to the time when the spending actually occurs;
41 and,
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43 WHEREAS, the size and scope of revenue and expenditures of the City budget are
44 difficult to predict and variances are tracked by the City’s Department of Finance and State
45 revenue variances are communicated by the DLGF; and,
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47

1 WHEREAS, in 2018, the Mayor/Executive and the City of Fort Wayne received
2 approximately Six Million Dollars (\$6,000,000.00) in unexpected revenues from various
3 sources; and,
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5 WHEREAS, the unexpected revenues were utilized or otherwise spent by the
6 Mayor/Executive Branch on City services without going through the appropriation process or
7 otherwise notifying Common Council or the general public that the funds had been received and
8 expended until after the funds were both received and spent; and,
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10 WHEREAS, in December, 2018, after the unexpected and unbudgeted revenues had been
11 received and otherwise expended, the Executive Branch requested an appropriation and an
12 amendment to the budget from Common Council which was approved and otherwise reported or
13 communicated to the DLGF; and,
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15 WHEREAS, the aforementioned process of approving an amended budget is contrary to
16 the spirit of the budgetary system; and,
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18 WHEREAS, Fort Wayne Municipal Code of Ordinances does not currently contain a
19 provision outlining obligations of the City to obtain appropriation approval for unexpected non-
20 real estate tax-based revenues, the expenditure for which has not been previously appropriated or
21 otherwise approved by Common Council.
22

23 NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE
24 CITY OF FORT WAYNE, INDIANA,
25

26 **SECTION 1.** That § 37.05: "Notice to Common Council of New, Non-Appropriated
27 Revenue Funds Prior to Expenditure" be inserted into Chapter 37: Finance and Revenue of the
28 Fort Wayne Municipal Code of Ordinances and shall read as follows:
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30 **§ 37.05 Notice to Common Council of New, Non-Appropriated Revenue Funds Prior to**
31 **Expenditure.**
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33 (A) The City, including any city departments, divisions, or city-operated utilities, upon
34 receiving revenue from a non-appropriated, non-budgeted, or otherwise new revenue
35 source (New Revenue), prior to expending said New Revenue, shall provide to Common
36 Council (in writing) the following information:
37

- 38 (1) the source(s) of the New Revenue;
- 39 (2) the date that the New Revenue was received by the City or the date (time frame)
40 when the New Revenue will be received;
- 41 (3) the Fund or Funds into which the New Revenue is or will be deposited;
- 42 (4) the total amount of the New Revenue received or expected;
- 43 (5) any restrictions attached to the New Revenue including those that impact expending
44 the revenue; and,
- 45 (6) the City's intended use and timetable for expenditure of the New Revenue.

1 (B) The City, including any city departments, divisions, or city-operated utilities, shall not
2 expend or commit to expend any New Revenue without completing the disclosure required
3 in subparagraph A herein.
4

5 (C) Any expenditure, contract to use or expend, commitment to use or expend, or other
6 agreement obligating the City or designating the use of the any New Revenue, undertaken
7 completed or committed to prior to completion of all of the disclosures required in sub
8 paragraph (A) herein, shall be considered void, terminated, or otherwise voidable and any
9 New Revenues already expended or otherwise disbursed shall be recoverable by the City
10 from the third party receiving the New Revenues as a result of the City's failure to comply
11 with this provision.
12

13 (D) Common Council shall have the right to apply to the Allen Circuit Court or Allen Superior
14 Court or any other Court of competent and appropriate jurisdiction to allow enforcement
15 under this ordinance and in so doing, Common Council may retain qualified legal council
16 to pursue such action which legal counsel and other attorney fees and cost shall be paid for
17 by and through funds appropriated and the budget for use by the legal department of the
18 City of Fort Wayne.

19 **SECTION 2.** That the City is directed to take all action necessary and proper for the
20 implementation of this Ordinance, including notifying all city departments, divisions, or city-
21 operated utilities of the Ordinance and its requirements.

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23 **SECTION 3.** That this Ordinance shall be in full force and effect from and after its
24 passage and any and all necessary approval by the Mayor.
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28 _____
29 Russ Jehl, Council Member
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32 **APPROVED AS TO FORM AND LEGALITY**
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35 _____
36 Joseph G. Bonahoom, Attorney for City Council