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4 **AN ORDINANCE** amending § 152.12 in the
5 Fort Wayne Municipal Code of Ordinances
6 **“Housing and Building Standards – Enforcement and Penalties”**
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9 **WHEREAS**, Neighborhood Code Compliance ("NCC") is a department within the Division of
10 Community Development tasked with upholding the standards of residential structures within the
11 City of Fort Wayne; and
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13 **WHEREAS**, Indiana Code requires that NCC provide notice to property owners when violations
14 have occurred; and
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16 **WHEREAS**, there are residents within the City of Fort Wayne who are habitual offenders whose
17 offenses result in the expenditure of a substantial amount of NCC’s resources, but provide little to
18 no benefit to the City of Fort Wayne; and allow said habitual offenders circumvent enforcement
19 with no penalty; and
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21 **WHEREAS**, Indiana courts can enter orders that provide for additional enforcement options,
22 which remove the onerous requirement of providing additional notice, and would cap the amount
23 of NCC Resources expended to police habitual offenders.
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26 **NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY**
27 **OF FORT WAYNE, INDIANA,**
28

29 **SECTION 1.** Section § 152.12 ENFORCEMENT AND PENATIES, of the Fort Wayne Code is
30 amended to add a new section (E) as follows:

31 (A) *Enforcement.* Whenever, upon inspection of any residential property, the Neighborhood
32 Code Official finds that conditions or practices exist which are in violation of any provision of
33 this chapter, or the Unsafe Building Law, IC 36-7-9-1 through IC 36-7-9-29, the Code Official
34 shall give written notice in accordance with the provisions of this chapter. Unless such
35 conditions or practices are corrected within a reasonable period, to be determined by the
36 Enforcement Authority, the owner or person responsible for such property shall be subject to the
37 graduated penalty scale as outlined in the standard operating procedures of the Enforcement
38 Authority and as determined by the Safe Housing and Building Oversight Committee. ('74 Code,
39 § 14.7-31(a))

40 (B) *Notice of violation.*

41 (1) *Notice of violation concerning minimum housing standards.* If the Code Official finds
42 that a violation of any portion of this chapter exists on the property or premises, with the
43 exception of any violation falling under the realm of public health and safety, the Official shall
44 issue a written notice of violation to the property owner, along with anyone else with a judgment,

1 Lien, Mortgage or any other property interest in the property, allowing sixty(60) days to correct
2 the violations. Subsequent to the notice of violation, the Enforcement Authority may enter into a
3 work plan for the abatement of the violations. The work plan shall set a date by which the
4 required work shall be completed. The date established in the work plan may extend beyond the
5 sixty (60) days established in the notice of violation. The Enforcement Authority may modify or
6 rescind a work plan as warranted by the significance of the violation(s) and the work needed to
7 correct the violation(s).

8 (2) *Notice of violation concerning health and safety.* If the Code Official finds that a
9 violation(s) pertaining to garbage, infestation, refuse, evidence of a clandestine laboratory,
10 existing fire hazard, occupant and/or tenant safety, and/or trash and debris as defined within this
11 chapter, or any condition deemed unsanitary, exists on the property or premises, the Code
12 Official shall issue a written notice of violation to the property owner, along with anyone else
13 with a judgment, lien, mortgage or any other property interest in the property, allowing no less
14 than ten (10) days, but not to exceed twenty (20) days to correct the violation(s). Unless such
15 violation(s) are corrected within the time frame determined by the Enforcement Authority, the
16 property shall be subject to the graduated penalty scale outlined in the Standard Operating
17 Procedures of the Enforcement Authority subsequent to an administrative hearing and as
18 determined by the Safe Housing and Building Oversight Committee

19 (C) *Order to repair.* The Code Official shall reinspect the property after the time period
20 provided in the notice of violation has expired, or upon expiration of the time given by the
21 Enforcement Authority. If any part of the violations listed in the notice of violation remain, the
22 Code Official shall issue an order requiring action pursuant to IC 36-7-9-5.

23 (D) *Order for abatement.* The Code Official shall reinspect the property after the time period
24 provided in the initial order. If any part of the violation(s) remain, the Enforcement Authority
25 may cause work to be performed by others to address such violations pursuant to IC 36-7-9-10
26 and IC 36-7-9-11.

27 (E) *Injunction Recommendation*

- 28 1. After three (3) instances during any twelve-month period from the date the first
29 notice of violation was given, where NCC has given notice of a violation and
30 opportunity to cure for a violation of this Chapter 152 of the Fort Wayne Code of
31 Ordinances, whether the repeated violation is/was cured, or after three (3) instances,
32 during any 6 month time frame from the date the first notice of violation was given
33 where NCC has given notice of a violation and opportunity to cure regarding
34 different violations, whether the violations are/were cured, the City shall be entitled to
35 injunctive relief and the Deputy Director of Neighborhood Code Compliance or
36 designee shall submit a formal, written recommendation to the City Law Office to
37 begin the process of obtaining a permanent injunction, through the appropriate court,
38 against the property owners, enjoining any and all actions or conditions which
39 constitute any of the violations for which notices were given in the time frames
40 specified. The District City Council representative and City Council Office shall be
41 provided with a copy the written injunction recommendation.
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2. The City Law Office shall make the determination, in writing, of whether to pursue a permanent injunction, and shall provide reasoning for that determination in writing to the Deputy Director of Neighborhood Code Compliance or designee, with a copy to the District City Council person and the Council Office.

3. The steps identified in items 1 and 2 of this Section E of Section 152.12 of the Fort Wayne Code shall be repeated each time the threshold for verified violations is met.

(F) *Manner of serving notice.*

(1) A notice of violation issued pursuant to § 152.12(B) shall be served in accordance with IC 36-7-9-25.

(2) A notice of an order issued under § 152.12(D) shall be served as provided in IC 36-7-9-25.

(G) *Emergencies.* The Enforcement Authority may take emergency action with respect to unsafe premises to protect life, safety, or property pursuant to IC 36-7-9-9. Such emergency action may be taken without issuing a notice of violation under § 152.12(B) or issuing an order under § 152.12 (D), but shall be limited to the action necessary to abate any immediate danger. ('74 Code, § 14.7-30)

(H) *Civil remedies.* The Enforcement Authority may bring a civil action for a violation of this chapter and/or Unsafe Building Law in the Allen County Circuit or Superior Court pursuant to IC 36-7-9-17, and seek the remedies authorized by IC 36-7-9-18 through 36-7-9-22, or pursuant to IC 36-1-6-4. The civil remedies provided for include injunctive relief, monetary civil penalties, posting of a performance bond, appointment of a receiver, authorizing of work to be performed by others, and cause action to be taken in the case of emergencies. Any civil penalty imposed by the Circuit or Superior Court under IC 36-7-9-19 may be certified to the County Auditor and become a special assessment as provided under IC 36-7-9-13.5.

(I) *Deposit in Unsafe Building Fund.* Monetary civil penalties collected pursuant to this chapter shall be deposited in the Unsafe Building Fund and may be used according to IC 36-7-9-14(c). ('74 Code, § 14.7-8)

(J) *Natural disaster.* Structures damaged as a result of fire, flood, storm, tornado, or other natural disaster, and verified by the Enforcement Authority, may be excluded from the enforcement provisions of this chapter for six months. Subsequently, any property subject to this subsection shall be subject to the provisions of this chapter.

(K) *Order to vacate; time allowed to vacate.*

(1) *Buildings unsafe for human occupancy.*

(a) Whenever a building, dwelling, dwelling unit, rooming house or rooming unit is declared by the Enforcement Authority as unsafe or unfit for human occupancy, the Enforcement Authority may post an order to vacate placard requiring such building to be vacated and to remain vacated. Such placard shall be authorized by the Enforcement Authority. It shall contain the address and phone number of the department and the date by which the occupant shall vacate

the building, dwelling or dwelling unit or portion thereof. The Enforcement Authority may issue an order to vacate pursuant to IC 36-7-9-5 or 36-7-9-17 if the owner or occupant fails to vacate the unsafe premises. ('74 Code, § 14.7-23)

(b) Conditions include:

1. Damage, decay, dilapidation, abandonment, unsanitary conditions or vermin or rodent infestation which constitute a hazard to the health or safety of occupants or the public;

2. The lack of required sanitation, illumination, ventilation, heating, electrical, plumbing or other facilities and systems adequate to protect the health and safety as to create a hazard to the occupants or the public;

3. Conditions or defects described in IC 36-7-9-4; ('74 Code, § 14.7-22)

4. Any building, dwelling or dwelling unit condemned as unfit for human occupancy and so designated and placarded by the Enforcement Authority, shall be vacated as ordered by the Enforcement Authority pursuant to IC 36-7-9-5 and IC 36-7-9-9. ('74 Code, § 14.7-22-24)

(2) *Tampering with placard.* It shall be unlawful for any person to deface, remove or alter any notice or placard from any structure or dwelling which has been placarded under this chapter except by the express written permission of the Enforcement Authority. ('74 Code, § 14.7-25)

(3) *Approval required for re-occupancy.* No building or dwelling unit which has been placarded as unfit for human occupancy shall again be used for human occupancy until written approval is secured from, and such placard is removed by, the Enforcement Authority. The Enforcement Authority shall remove such placard whenever the defect(s) upon which the condemnation and placard action were based have been corrected. ('74 Code, § 14.7-26)

(4) *Penalties.* Any violation of IC 36-7-9-28 or any provision of this chapter for which another penalty is not provided, shall, upon conviction by the court, be imposed by a penalty not to exceed \$2,500 per violation. Each and every day on which the condition exists shall constitute a separate and distinct violation. All penalties and costs recovered by the city pursuant to this chapter shall be placed in the Unsafe Building Fund. ('74 Code, § 14.7-32)

(L) *Access to premises in violation of this chapter.* If the Enforcement Authority has issued an Order to Vacate an unsafe building, the owner or person in possession of same may only enter such building upon signing an affidavit of acknowledgment to the Enforcement Authority establishing the limited purposes and time for such entry. Any unauthorized entry or use of premises or structures subject to an order issued by the Enforcement Authority is subject to the sanctions specified in IC 36-7-9-28.

(M) *Affirmative defense.* It shall be an affirmative defense to a notice and/or order issued pursuant to § [152.12](#) if an owner can show, by clear and convincing evidence, that said owner could not legally enter the premises in order to correct the violation at the time the notice and/or order was issued.

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

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Russell Jehl, Council Member

APPROVED AS TO FORM AND LEGALITY

Joseph G. Bonahoom, City Council Attorney