BILL NO. R-26-08-20

RESOLUTION NO. R-____________

A RESOLUTION determining SUBSTANTIAL COMPLIANCE OR NON-COMPLIANCE with Statement of Benefits (CF-1) form filing for 2026 for Smith Brothers of Berne, Inc. for property at 6710 Innovation Boulevard, Fort Wayne, IN 46818 under Confirming Resolution R-23-22 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 Smith Brothers of Berne, 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, Smith Brothers of Berne, Inc. has filed CF-1 forms with the City of Fort Wayne, Allen County Assessor; and

WHEREAS, Smith Brothers of Berne, Inc.'s approved SB-1 form stated that 20 full-time jobs would be retained and 70 full-time jobs would be created by December 31, 2027; and

WHEREAS, Smith Brothers of Berne, Inc.'s approved SB-1 form stated $809,266 in annual payroll would be retained for the 20 full-time retained jobs and $3,304,050 in annual payroll created for the 70 full-time jobs to be created; and

WHEREAS, Smith Brothers of Berne, Inc.'s 2026 CF-1 form filing stated that 20 full-time jobs have been retained and 23 full-time jobs have been created; and

WHEREAS, Smith Brothers of Berne, Inc.'s 2026 CF-1 form filing stated $877,011 in annual payroll for the 20 full-time jobs retained and $1,125,381 in annual payroll for the 23 full-time jobs 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 20 full-time jobs to be retained and 70 full-time jobs to be created means retaining 15 full-time jobs and creating 52 full-time job; and

WHEREAS, meeting 75% of the $809,266 retained annual payroll means $606,949 in retained annual payroll and 75% of the $3,304,050 in created annual payroll means $2,478,037 in created annual payroll; and

WHEREAS, Common Council will determine no later than forty-five (45) days after receipt of the CF-1 form that an approved business has either failed to substantially comply or has substantially complied with the original SB-1 form approved by Common Council; and

WHEREAS, Common Council made a determination on June 23, 2026 that Smith Brothers of Berne, Inc. was not in substantial compliance as a result of its failure to retain at least 15 full-time jobs with a retained annual payroll of at least $606,949 and create at least 52 new full-time jobs with at least $2,478,037 in created annual payroll; and

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

WHEREAS, the aforementioned notice was properly prepared and served upon Smith Brothers of Berne, Inc. to appear before Council on August 25, 2026 at 5:30pm in Room 030 at Citizen's Square 200 E. Berry Street Fort Wayne, IN; and

WHEREAS, Smith Brothers of Berne, Inc. [appeared/failed to appear] before Common Council on August 25, 2026 to provide additional information concerning compliance.

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

SECTION 1. That, Common Council finds that the CF-1 forms filed by Smith Brothers of Berne, Inc. with an approved Economic Revitalization Area for 2026 are not in substantial compliance pursuant to I.C. 6-1.1-12.1 and Section 153.21 of the Municipal Code of the City of Fort Wayne for failure to create 75% of the 70 full-time jobs, or 52 full-time jobs, as stated and create 75% of the $3,304,050, or $2,478,037 in annual payroll that was stated that would be generated by the created jobs.

SECTION 2a. Smith Brothers of Berne, Inc. failed to appear and otherwise testify and therefore Council confirms its determination of June 23, 2026 that Smith Brothers of Berne, 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 as detailed in Section 1 above. Council therefore finds that Smith Brothers of Berne, Inc. has failed to substantially comply and said failure was not caused by factors outside of Smith Brothers of Berne, Inc.'s control. As a result of said failure, Smith Brothers of Berne, Inc.'s deduction/abatement under R-23-22 is hereby terminated

SECTION 2b. That Smith Brothers of Berne, Inc. appeared and testified at the hearing and from its testimony it was determined that notwithstanding Smith Brothers of Berne, Inc.'s failure to substantially comply as detailed in Section 1 above that Smith Brothers of Berne, Inc. did make reasonable efforts to substantially comply with the statement of benefits and Smith Brothers of Berne, Inc.'s failure to substantially comply was caused by factors beyond the control of Smith Brothers of Berne, Inc. Therefore, the continuation of Smith Brothers of Berne, Inc.'s deduction/abatement under R-23-22 is hereby approved.

SECTION 2c. That Smith Brothers of Berne, Inc. appeared and testified at the hearing and from its testimony it was determined in addition to Smith Brothers of Berne, Inc.'s failure to substantially comply as detailed in Section 1 above, that Smith Brothers of Berne, Inc. did not make reasonable efforts to substantially comply with the statement of benefits and Smith Brothers of Berne, Inc.'s failure to substantially comply was not caused by factors beyond the control of Smith Brothers of Berne, Inc. As a result of said failure, Smith Brothers of Berne, Inc.'s deduction/abatement under R-23-22 is hereby terminated.

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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Malak Heiny, City Attorney