

LAPORTE COUNTY, INDIANA
ORDINANCE NO. 2022- 2

AN ORDINANCE AMENDING THE CODE OF ORDINANCES
OF LAPORTE COUNTY CONCERNING
PREVENTION OF CERTAIN CONTRACTOR FRAUD

WHEREAS, the Board of Commissioners of LaPorte County, Indiana (hereinafter referred to as the “Commissioners”) have reviewed the existing Code of Ordinances of LaPorte County as related to the purpose of preventing fraud on the part of construction contractors in the County; and

WHEREAS, the Commissioners have been advised that the amendment/addition of a certain Section of the Code of Ordinances of LaPorte County is required for the purpose of preventing fraud on the part of construction contractors in the County; and

WHEREAS, the Commissioners have determined that it is necessary and advisable to amend/add a certain Section of the Code of Ordinances of LaPorte County pertaining to the purpose of preventing fraud on the part of construction contractors in the County; and

WHEREAS, the Commissioners having reviewed the relevant Ordinance in the Code of Ordinances of LaPorte County and all applicable law, now concurs that it is advisable, necessary, and in the best interests of the residents of LaPorte County that amendment/addition be made to a certain Section of the Code of Ordinances pertaining to the purpose of preventing fraud on the part of construction contractors in the County.

NOW, THEREFORE, BE IT ORDAINED by the Commissioners of the LaPorte County, State of Indiana, as follows:

SECTION I: That the Code of Ordinances of LaPorte County, Indiana is hereby amended in Title XV entitled: “Land Usage”; Chapter 151 entitled: “Building Code”; Section(s) 151.50-151.63 entitled: “Contractor Registration” by adding the following Section:

“§ Section 151.64. SPECIAL REGULATIONS FOR CERTAIN CONTRACTORS.

(a) Each building permit issued for the construction, reconstruction, remodeling, renovation, repair, maintenance activity, or demolition of any commercial building or structure, or residential building/development containing at least five (5) dwelling units, provided that the cost of the work inclusive of materials and labor for a residential building/development has a reasonable estimated value of more than \$250,000.00, shall be subject to the following additional conditions, qualifications and requirements at all times during the contractor's performance of work on the project:

- (1) The contractor has not been excluded, barred or suspended from submitting a bid or being awarded a contract to perform construction work by any federal, state, or local government agency or instrumentality in the three (3) years preceding application for the building permit for violation of any law or regulation requiring the provision of workers compensation insurance to persons working for or under the control of the contractor as the law may require, misclassifying employees as independent contractors, failure to pay, when due, employer payroll taxes or employee income tax withholding, failure to comply with wage and hour laws, prompt payment law, or prevailing wage laws;
- (2) No court or governmental agency has found or determined in the three years preceding application for the building permit, the contractor to be in violation of any law or regulation requiring the provision of workers compensation insurance to persons working for or under the control of the contractor as the law may require, misclassifying employees as independent contractors, failure to pay, when due, employer payroll taxes or employee income tax withholding, failure to comply with wage and hour laws, prompt payment law, or prevailing wage laws;
- (3) The contractor must obtain and maintain appropriate workers compensation insurance coverage for its employees as required by I.C. §22-3-5 *et seq.*, and provide a certificate evidencing such insurance coverage to the Building Commissioner to be maintained as a public record;
- (4) The contractor must properly classify employees as employees rather than independent contractors and treat them as employees for purposes of complying with minimum wage and overtime compensation, worker's compensation insurance coverage, unemployment taxes, social security taxes, and state and federal income tax withholding;
- (5) The contractor must maintain detailed written payroll records and provide such records, upon written request to the Building Commissioner or his/her designee, within five (5) business days of the contractor's receipt of the request;
- (6) The contractor must comply with I.C. §22-2 *et seq.*, with respect to the timely payment of wages; and
- (7) If required by law, the contractor must timely pay contributions to the unemployment insurance benefit fund established by I.C. §22-4-26-1.

(b) An owner of property who applies for a permit covered by this section shall use his or her best efforts to require that all contractors performing construction work on the property comply with the foregoing requirements of this section. Consistent with this Section the Building Commissioner may suspend or revoke the registration of any contractor upon a determination that the contractor failed to comply with any one or more of the requirements in Section 151.64(a). Upon suspension or revocation of the contractor's registration, contractor shall cease all work until further notice by the Building Commissioner. The Building Commissioner may withdraw the suspension or revocation of the contractor's registration when he or she determines that all violations by the contractor have been satisfactorily remedied. As provided in Section 151.64(c), any contractor that has had its registration suspended or revoked shall have the right to appeal such determination with the Commissioners.

(c) Any person may file a Complaint concerning the possible violation of the requirements of Section 151.64(a). Each such Complaint shall be made in writing, signed by the complaining party and affirmed upon the complainant's personal knowledge or belief under penalty of perjury. Any Complaint may also include documents supportive of such Complaint. The Complaint shall be filed with the office of the Building Commissioner who shall cause due inquiry or investigation to be made by himself or herself or through the Building Commissioner's designee. Each registered contractor agrees to produce documents or records germane to the issues raised in a written Complaint to the Building Commissioner within five (5) business days of the Building Commissioner's written request. Any information provided shall not include any employee addresses, social security numbers, and/or dates of birth. Absent any law to the contrary, the Complaint and any documents collected as part of the Building Commissioner's investigation shall be considered Public Records under the Indiana Public Records Act. In the event that the Building Commissioner determines the contractor has failed to comply with any one or more of the requirements in Section 151.64(a), the Building Commissioner may suspend or revoke the registration of the contractor. Upon suspension or revocation of the contractor's registration, contractor shall cease all work until further notice by the Building Commissioner. The Building Commissioner may withdraw the suspension or revocation of the contractor's registration when he or she determines that all violations by the contractor have been satisfactorily remedied. As provided in Section any contractor that has its registration suspended or revoked shall have the right to appeal such determination with the Commissioners. In addition, the person who filed the Complaint may also appeal the decision of the Building Commissioner to the Commissioners. Any appeal must be filed with the County Clerk within thirty (30) days of the decision of the Building Commissioner.

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(d) Upon receipt of a timely appeal, the matter will be considered by the Commissioners at a public meeting where interested parties will be given an opportunity to speak and submit evidence. Pending review by the Commissioners, any suspension or revocation of the contractor's registration shall remain in place consistent with Section 151.64(b). If the Commissioners find that one or more violations have occurred, the Commissioners may suspend or revoke the registration of the contractor and shall turn over any documents obtained in the matter to State or Federal prosecutorial authorities for further investigation or prosecution. In addition, if the Commissioners finds that the individual filing the Complaint provided false or materially misleading information and filed a Complaint for the purpose of harassment or other reasons inconsistent with this Ordinance, the Commissioners may assess a fine in an amount not to exceed \$2,500.00 plus any actual expenses incurred by LaPorte County in investigating the allegations in the Complaint. The Commissioners may also direct the County Attorney to refer the matter to the LaPorte County Prosecutor for further review.

(e) Pursuant to Section 151.64(a), the Building Commissioner has the right to issue a stop-work order. If, as part of the Building Commissioner's review of information under Section 151.64(b) and/or a Complaint under Section 151.64(c), it is determined that additional contractors that previously worked on the project or are currently working on the project may also be in violation of Section 151.64(a), the Building Commissioner may issue a stop-work order until such time as assurances can be provided that additional violations of Section 151.64(a) will not occur.

(f) A contractor found to have violated the conditions and requirements of Section 154.64(a) may have its registration with LaPorte County revoked for a period not exceeding three (3) years from the date of such determination.

(g) Any contractor that has its registration revoked under Section 151.64(f) may seek reinstatement of its registration upon expiration of the term imposed by the Commissioners. Any reinstatement shall be conditioned on the contractor providing payroll records, proof of insurance and other documentation reasonably requested by the Building Commissioner for each future project to ensure that the activities that caused the registration revocation under Section 151.64(f) is not repeated.”

SECTION II: That all existing Ordinances, and Code of Ordinance Sections, or parts thereof, in conflict with the provisions of this Amendatory Ordinance are hereby deemed null, void, and of no legal effect, and are specifically repealed.

SECTION III: That if any section, clause, provision or portion of this Amendatory Ordinance shall be held to be invalid or unconstitutional by any Court of competent jurisdiction, such decision shall not affect any other section, clause, provision or portion of this Amendatory Ordinance.

SECTION IV: That this Amendatory Ordinance shall take effect, and be in full force and effect, from and after its passage by the Board of Commissioners of LaPorte County, Indiana.

PASSED AND ADOPTED by the Board of Commissioners of the County of LaPorte, Indiana, this 4th day of May, 2022.

LAPORTE COUNTY COMMISSIONERS

1st Read 4-20-2022
2nd Read 5-4-2022

Shirley Martin

Richard G. Murgala, Jr.

NAY (Haney)

ATTEST:

James J. Stalvey
Auditor