

ORDINANCE NO. 2019 – 08

**An Ordinance to Amend the Municipal Code of the City of Hobart  
Concerning Prevention of Contractor Tax Fraud and  
the Issuance and Retention of Building Permits**

WHEREAS, the Common Council (“Council”) of the City of Hobart, Indiana (“City”) has been advised that amendments to the Municipal Code of the City (“Code”) are required for the purpose of preventing fraud on the part of construction contractors in the City, and in the issuance and retention of building permits; and

WHEREAS, the Council, being duly advised, desires to enact the following amendments to the Code for these purposes.

THEREFORE, BE IT ORDAINED by the Common Council of the City of Hobart, Indiana as follows:

*SECTION ONE:* The Municipal Code of the City of Hobart, Indiana (“Code”) is hereby amended in Chapter 150 on “*BUILDING REGULATIONS; CONSTRUCTION*” by adding the following new subsection to §150.060 entitled “PERMIT; APPLICATION AND DURATION:”

(H) For the purpose of this subsection, the term “contractor” shall mean any construction manager, general contractor, other lead or prime contractor, subcontractor of any tier or any entity functioning in any such capacity, and any other entity or person engaged by or on behalf of the owner to perform work upon the property subject to a building permit issued under this section. Each building permit issued for the construction, reconstruction, remodeling, renovation, repair, maintenance activity, or demolition of any commercial building or structure, or residential building containing at least five (5) dwelling units, provided that the cost of the work inclusive of materials and labor 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;

(2) No court or governmental agency has found or determined 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. §22-3-5-1, *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) The contractor must timely pay contributions to the unemployment insurance benefit fund established by I.C. §22-4-26-1.

An owner of property who applies for a permit covered by this subsection 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 subsection. The Building Commissioner may issue a stop work order against any contractor subject to the foregoing provisions of this subsection who fails to comply with any one or more than one of them. Upon entry of such order, all work on the affected project shall cease until further

notice by the Building Commissioner or Contractor's Licensing Board. The Building Commissioner may withdraw the stop work order when he or she determines that any violations by the contractor have been satisfactorily remedied.

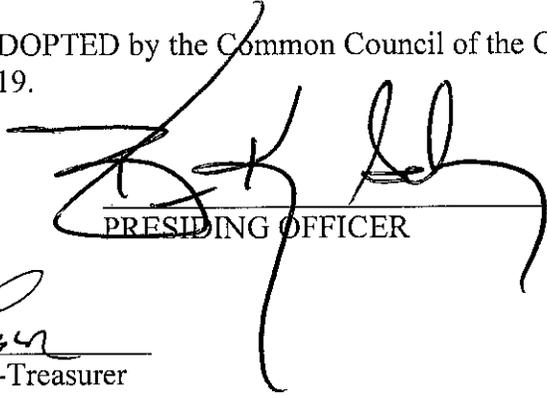
Any person may file a complaint concerning the possible violation of the conditions, qualifications and requirements of this subsection. Each such complaint shall be made in writing, signed by the complaining party and affirmed upon the complainant's knowledge or belief under penalty of perjury. The 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 Commissioner's designee. Each contractor who is issued a permit under this section agrees to produce all payroll or other documents or records germane to the issues raised in a written complaint to the Building Commissioner within five (5) business days of the Commissioner's written request. In the event that the Commissioner finds the existence of reasonable suspicion to believe that one or more violations of the conditions, qualifications and requirements of this subsection has occurred, the contractor shall be given due notice of the complaint against it and an opportunity to be heard before the Contractors Licensing Board of the City. If the Board determines that one or more violations have occurred, the contractor may be fined, subjected to suspension or loss of license. In the alternative, the Commissioner may turn over the documents obtained in the matter to State or Federal prosecutorial authorities for further investigation or prosecution. Unless such documents are provided to law enforcement or prosecutorial authorities, they shall be treated as public records under the Access to Public Records Act of the State of Indiana.

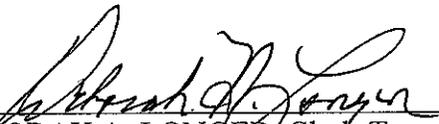
A contractor found to have violated the conditions and requirements of this subsection shall be barred from applying for or being granted a building permit for five (5) years from the date of such determination. At the end of that period, the Building Commissioner may require the affected contractor to produce, on a regular basis, all payroll documents including pay stubs to all employees documenting minimum wage and overtime compensation, worker compensation insurance coverage, the payment of unemployment taxes, social security taxes and state and federal income tax withholding, and certification of current workers compensation insurance coverage for the proper number of employees, all on a regular basis at intervals determined by the Building Commissioner, for the duration of the permit.

*SECTION TWO:* All ordinances or portions thereof in effect prior to the effective date and in conflict with the provisions of this ordinance are hereby repealed.

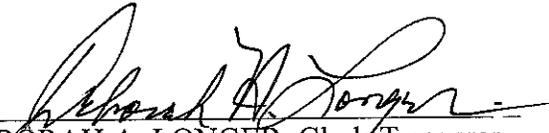
*SECTION THREE:* This ordinance shall be in full force and effect from and after its passage in the manner required by law.

ALL OF WHICH is PASSED and ADOPTED by the Common Council of the City of Hobart, Indiana on this 19th day of June, 2019.

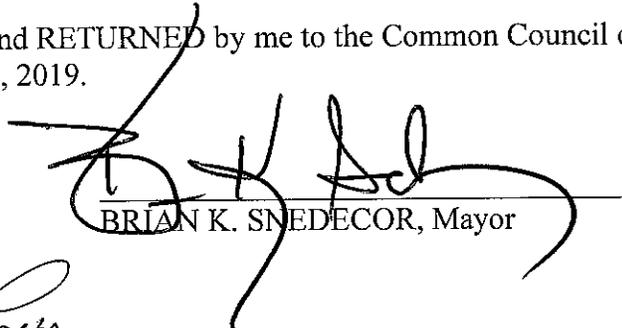
  
\_\_\_\_\_  
PRESIDING OFFICER

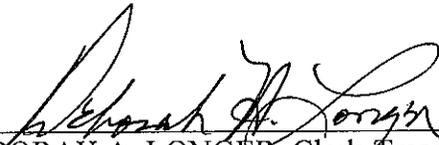
ATTEST:   
\_\_\_\_\_  
DEBORAH A. LONGER, Clerk-Treasurer

PRESENTED by me to the Mayor of the City of Hobart on the 19<sup>th</sup> day of June, 2019 at the hour of 7:15 p.m.

  
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DEBORAH A. LONGER, Clerk-Treasurer

APPROVED, EXECUTED and RETURNED by me to the Common Council of the City of Hobart on this 19<sup>th</sup> day of June, 2019.

  
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BRIAN K. SNEDECOR, Mayor

ATTEST:   
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DEBORAH A. LONGER, Clerk-Treasurer