

# NEWS RELEASE

Department of  
Local Government Finance

**For Immediate Release**

**Friday, February 22, 2008**

## **DLGF denies Fort Wayne request to increase levy**

INDIANAPOLIS (Feb. 22, 2008) – The Department of Local Government Finance (DLGF) today denied the request from the City of Fort Wayne to increase the city's levy, which had been passed in September.

"This request to increase property tax spending is unprecedented," DLGF Commissioner Cheryl Musgrave said. "It appears to be a double-cross on taxpayers, who, for months, have been promised a tax cut,"

"State law requires budget adoption by Sept. 30, and as such, we are denying the request."

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Attachment:

Order denying City of Fort Wayne request for an increase to tax levy previously set

**DEPARTMENT OF LOCAL GOVERNMENT FINANCE  
100 NORTH SENATE AVENUE  
IGCN, ROOM N1058  
INDIANAPOLIS IN 46204**

IN THE MATTER OF A PETITION FROM )  
CITY OF FORT WAYNE, ALLEN COUNTY, )  
REQUESTING AN INCREASE IN THE TAX LEVY ) Order  
PREVIOUSLY SET BY DEPARTMENT )

**FINDINGS OF FACT AND FINAL DETERMINATION**

APPLICABLE LAW

1. Except for specific circumstances, such as in Indiana Code section 6-1.1-17-16(i), the Department of Local Government Finance ("Department") may not increase a political subdivision's budget by fund, tax rate, or tax levy to an amount which exceeds the amount originally fixed by the political subdivision. If the Department proposes to revise, reduce, or increase a political subdivision's tax levy or tax rate, the Department is required to give the political subdivision written notice specifying the proposal. Ind. Code § 6-1.1-17-16(d).

2. Subject to the provisions of all applicable statutes, the Department may increase a political subdivision's tax levy to an amount that exceeds the amount originally fixed by the political subdivision if the increase is:

a. requested in writing by the officers of the political subdivision;

b. either:

(1) based on information first obtained by the political subdivision after the public hearing under section 3 of this chapter [i.e., public budget hearing]; or

(2) results from an inadvertent mathematical error made in determining the levy; and

c. published by the political subdivision according to a notice provided by the Department. Ind. Code § 6-1.1-17-16(i).

3. The political subdivision is required to give notice by publication to taxpayers of:

a. the estimated budget;

b. the estimated maximum permissible levy;

c. the current and proposed tax levies of each fund; and

d. the amounts of excessive levy appeals to be requested. Ind. Code § 6-1.1-17-3(a).

4. In the notice, the political subdivision shall also state the time and place at which a public hearing will be held on these items. *Id.*

5. In a second class city, which is a city with a population between 35,000 and 599,999, that public hearing, by any committee or by the entire fiscal body, may be held at any time after introduction of the budget. Ind. Code § 6-1.1-17-5(a); *see also* Ind. Code § 36-4-1-1(a).

#### FINDINGS OF FACT

1. On September 25, 2007, the City Council of Fort Wayne passed Appropriation Ordinance Number A-03-07. *Special Ordinance No. S-13-08*, pg 1.

2. The Appropriation Ordinance required the 2008 levy to remain at the 2007 levy amount of \$99,440,991. *Id.*

3. The 2008 levy increase would have been \$3,679,314 had the city not approved the levy freeze. *Id.*

4. The Fort Wayne city council passed the 2008 budget freezing the 2008 levy at the 2007 levy level, "reducing taxes for residents." If the levy was increased as requested by the city, "[i]t would mean an estimated additional \$10.36 on a \$100,000 home." Kathleen Quilligan, *Henry asks to roll back tax freeze*, Fort Wayne News-Sentinel (Jan. 11, 2008), ([www.news-sentinel.com/apps/pbcs.dll/article?AID=/20080111/NEWS/801110334](http://www.news-sentinel.com/apps/pbcs.dll/article?AID=/20080111/NEWS/801110334)).

5. The certified levy growth for Fort Wayne civil city for 2005-pay-2006 to 2006-pay-2007 increased by 20.45% (2006 levy amount: \$82,560,277; 2007 levy amount: \$99,440,911). *2006-2007 Certified Levy Comparison - February 2008*, ([www.in.gov/dlgf/pdfs/CertifiedLeviesForTheWeb.pdf](http://www.in.gov/dlgf/pdfs/CertifiedLeviesForTheWeb.pdf)).

6. On or about January 10, 2008, the Department notified Fort Wayne of its 2008 COIT and CREDIT distributions. The distributions to Fort Wayne civil city were as follows: \$12,311,932 in certified COIT; and \$11,555,907 in certified CREDIT. Both CREDIT and COIT revenues experienced an excess or surplus, and was distributed to be deposited into the city's rainy day fund. The CREDIT surplus is \$2,157,560 and the COIT surplus is \$342,861. *Department Income Tax Reports*, 2008. For 2007, the city's COIT monies were not used for property tax relief (except for the countywide local homestead credit) because the city had adopted and certified levies sufficient to be at their maximum levy allowable by law. *Id.*, 2007.

7. On February 5, 2008, the Common Council of Fort Wayne adopted Special Ordinance Number S-13-08. Mayor Thomas C. Henry approved and signed the Special Ordinance on February 6, 2008. *Special Ordinance No. S-13-08*, pg 4.

8. The Special Ordinance requested that the Department increase the tax levy above the amount adopted in Appropriation Ordinance Number A-03-07 pursuant to Indiana Code section 6-1.1-17-16(i). The Special Ordinance asked that the tax levy be set by use of the State formula in determining the tax levy in 2008. *Id.*, pg. 3.

9. The Special Ordinance alludes to the fact that the previously adopted 2008 levy should be replaced with an increase in the tax levy because in November 2007, "HB 1001 was introduced with a multitude of changes including a 1% circuit breaker for homesteads," which could result in a reduction in the civil city tax levy for 2009 and beyond. *Id.*, pg. 2.

10. In further explanation of Fort Wayne's request to undo the adopted property tax levy freeze, the city council passed "the budget and the property tax levy amount prior to Governor Daniels' announcing in October his proposed property tax reforms." The budget, the city argues, was based on information that changed in October. *Property Tax Freeze to be Un-frozen?*, MSNBC.com, ([www.msnbc.msn.com/id/22999998/](http://www.msnbc.msn.com/id/22999998/)).

11. Governor Daniels' proposal, announced on October 23, 2007, if adopted, would permanently cap property taxes as a percentage of assessed value at one percent (1%) for residential, two percent (2%) for rental properties, and three percent (3%) for businesses. *Property Tax Relief Plan*, ([www.in.gov/gov/3105.htm](http://www.in.gov/gov/3105.htm)).

12. Per Indiana Code section 6-1.1-17-16(i), which the Common Council cited as their authority to request an increase in their 2008 levy, the Department "may increase" the city's tax levy to an amount that exceeds the amount originally fixed by the city (\$99,440,991) if the increase is based upon certain criteria.

13. First, the increase in the tax levy must be requested in writing by the officers of the city. On February 15, 2008, the Department received via fax Special Resolution Number S-13-08.

14. Second, the request for the increase in the tax levy must be based on information first obtained by the city *after* the public budget hearing, which was held prior to adoption of the budget on September 25, 2007. Also, the request for an increase could result from an inadvertent mathematical error made in determining the levy. Based upon the Special Ordinance and the news articles cited above, it is clear Fort Wayne is basing its justification for the request to increase the previously adopted 2008 levy on the argument that the Governor's property tax proposal was information they did not have at the time of their public budget hearing and adoption on September 25, 2007.

15. Fort Wayne's argument for an increase to the levy fails for five reasons:

a. First, it was known or should have been known by Fort Wayne officials that property tax reform and restrictions on local spending would be a focus of the General Assembly and the Governor for the 2008 session *before* the city's September 2007 public budget hearing and adoption. Such examples of information available to city officials prior to the public budget hearing and adoption include:

(1) The reassessment orders and re-trending directives issued for 2006-pay-2007 in Marion, Posey, Gibson, Delaware, Jay, Montgomery, and Warren Counties. All of these orders or directives were issued prior to September 25, 2007 ([www.in.gov/dlgf/retrrending/index.html](http://www.in.gov/dlgf/retrrending/index.html));

(2) The General Assembly's passage of the property tax rebate in the 2007 session of the General Assembly in anticipation of increased property tax bills, and the approval of a property tax restructuring bill in the same session, which among other things, permitted local governments

to raise local income taxes instead of property taxes to fund future spending growth (*Lawmakers Approve Budget, Property-Tax Rebates* (April 29, 2007) ([www.theindychannel.com/politics/13219581/detail.html](http://www.theindychannel.com/politics/13219581/detail.html));

(3) On July 18, 2007, Governor Daniels appointed Indiana Supreme Court Chief Justice Randall T. Shepard and former Governor Joe Kernan to co-chair a bipartisan commission to examine and make recommendations on reforming and restructuring local government. The bipartisan commission was directed to examine reforming and restructuring local government to find long-term solutions to the current property tax dilemma. The commission was to report its findings and recommendations by late December 2007 in time for the General Assembly and Governor to discuss during the 2008 legislative session ([www.in.gov/library/3001.htm](http://www.in.gov/library/3001.htm)); and

(4) The very fact Fort Wayne took the unusual step of freezing its 2008 levy at the 2007 level to provide property tax relief is evidence city officials knew the property tax environment in Indiana had changed.

Thus, it is clear that Fort Wayne's request to increase their previously adopted 2008 levy is not based on information first obtained after the September public budget hearing and adoption, but is an attempt by the current city council and mayor to reverse the property tax relief adopted on September 25, 2007 by the previous city council and mayor.

b. Second, the Department has calculated the property tax impact from including the \$3,679,314 increase to the 2008 levy to be \$12.32 on a \$100,000 home, net of all credits and standard deductions. It was reported in the Fort Wayne media that the property tax impact that would occur from approving the \$3,679,314 increase in the levy would be \$10.36 on a \$100,000 home. Quilligan, *supra*. To permit a \$10 or \$12 property tax increase by overturning a previously adopted budget would harm taxpayers.

c. Third, the city council adopted a budget on September 25, 2007 with a property tax levy freeze at the 2007 level. This was an intentional decision validated by the city council and approved by the mayor. The budget process was adhered to and an elected city council and mayor approved the levy freeze. To permit this freeze to be overturned on the argument that property tax reform and restrictions on local spending is "new information" that came to light after the budget hearing and adoption is not persuasive in light of the evidence that such reforms, or likely attempts at reform, had been well-known in September 2007.

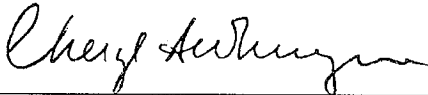
d. Fourth, the levy freeze adopted by the city council in September 2007 was done to reduce property taxes for residents of the city. This levy freeze for 2008 is after the Fort Wayne city civil levy grew by over twenty percent (20%) from 2006 to 2007. The levy freeze for 2008 at the 2007 level is reasonable and will allow the city to operate in 2008 just as it did in 2007.

e. Lastly, the Governor's property tax reform plan, which was initially contained in HB 1001, is not yet law. The General Assembly is still in session debating the Governor's plan, including circuit breakers and other property tax reform proposals.

FINAL DETERMINATION

WHEREFORE, to approve the increase in the levy would be in contravention of the statute because it was known, or should have been known, by Fort Wayne officials *before* the September 2007 public budget hearing and adoption that some measure of property tax reform and local spending restrictions would be a focus of the General Assembly and the Governor for the 2008 legislative session. Therefore, based upon the above findings of fact and applicable law, the request by the city of Fort Wayne to increase their 2008 tax levy to an amount that exceeds the amount originally fixed on September 25, 2007 is hereby DENIED.

Signed this 22<sup>d</sup> day of February, 2008.

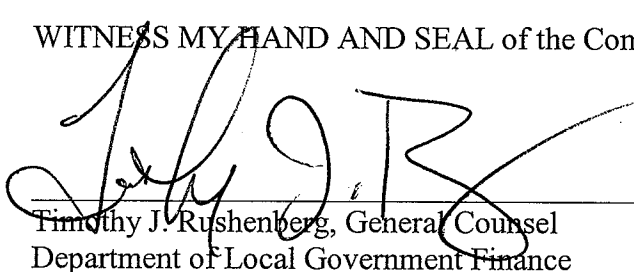


Cheryl A. W. Musgrave, Commissioner  
Department of Local Government Finance

STATE OF INDIANA  
DEPARTMENT OF LOCAL GOVERNMENT FINANCE

I, Timothy J. Rushenberg, General Counsel for the Department of Local Government Finance, do hereby certify that the above is an order of the Commissioner of the Department of Local Government Finance made this date in the above entitled matter and that the Commissioner has personally signed the same under her statutory authority.

WITNESS MY HAND AND SEAL of the Commissioner on this 22<sup>d</sup> day of February, 2008.



Timothy J. Rushenberg, General Counsel  
Department of Local Government Finance