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ORDINANCE 2016-31

AN ORDINANCE AUTHORIZING AND ESTABLISHING WHITESTOWN COMPACT FEES

WHEREAS, the Town Council for the Town of Whitestown, Indiana ("Whitestown" or "Town") is the legislative body of Whitestown, including the Whitestown Municipal Utilities; and

WHEREAS, Indiana Code § 36-4-3-21 ("Section 21") provides that, in lieu of annexing territory or also in cases not involving annexation, a municipality may enter into contracts with the owners or lessees of designated property in the vicinity of the municipality, providing for the payment or contribution of money to the municipality for municipal or public purposes ("Compact Fees"); and

WHEREAS, such Compact Fee payments may be:

(i) related to or in consideration of municipal services or benefits received or to be received by the property owners or lessees;

(ii) in lieu of taxes that might be levied on annexation of the designated property; or

(iii) wholly unrelated to municipal services or benefits or to potential tax impositions on the designated property; and

WHEREAS, though Compact Fees are not rates or charges under Indiana Code 36-1.5 or Indiana Code 36-4-23, they are often linked to the extraterritorial extension or provision of municipal utility service because of the corresponding increase in development density and demand for other Town service; and

WHEREAS, the Town Council finds that the use of Compact Fees is justified and that the provisions of this Ordinance and the payments set forth below are reasonable and appropriate; and

WHEREAS, the Town Council desires to consent to, approve, and establish the Compact Fees outlined in this Ordinance.

NOW, THEREFORE BE IT ORDAINED by the Town Council of the Town of Whitestown, Indiana, as follows:

Section 1. Agreements.

(A) *Agreement for sanitary sewer or water service.*

(1) All new customers (or customers expanding capacity) for sanitary sewer or water service located outside the corporate limits of Whitestown must execute an agreement for utility services providing, in part, for a Compact Fee as calculated pursuant to this Ordinance. The term of the agreement shall be four (4) years and as long thereafter as the customer receives utility service and is not located within the Town's corporate boundaries. Any amount of the Compact Fee not paid by the due date shall be considered delinquent. The delinquent charge shall be 10% of the delinquent amount and shall be added to the total amount due. The delinquent amount, together with any delinquent penalties, costs, and other expenses of collection may be collected by the Town by any

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lawful remedy, including the placing and foreclosure of real estate liens. If, at the expiration of the term, the property owner does not wish to renew under the same terms and conditions, the property owner must, at the owner's expense, disconnect the property from the Town's utility system. At the end of the four (4) year initial term and each subsequent term, the agreement shall automatically renew for an additional four (4) year term unless the property owner provides notice of its intent not to renew at least two (2) years in advance of the expiration of such term, at which expiration the owner must disconnect from the Town's utility system. If the terms of the agreement do not apply for any reason, then the utility service to the property service shall cease. The application and agreement for sewer and/or water service shall require the property owner to pay to the Town the following applicable Compact Fee:

(a) *For owners of real property used for residential purposes.* Forty dollars ($40.00) per lot or residence, per month for developed residential property. This fee shall increase $4 per month per lot every 5 years, starting January 1, 2022.

(b) *For owners of real property used for nonresidential purposes.* An annual amount equal to $0.4368 times each $100 of net assessed value or, for new construction, on the estimated net assessed value upon completion. This fee remains in effect unit January 1, 2022, at which time it will be recomputed to equal 40% of the Town tax rate and will be similarly recomputed every five (5) years thereafter. The Compact Fee provided herein is not a property tax; as such, the fee shall be computed as provided hereunder without regard to the effect of any property tax caps or other tax rates or levies.

(c) *Governmental Entities.* Governmental entities, including public schools, shall not be charged a Compact Fee.

(2) The Council hereby consents to any and all agreements entered into by Whitestown Municipal Utilities that contain terms described in this Ordinance. The Town Manager and/or Utility Superintendent may include within such agreements other terms and conditions related to the payment of the Compact Fee as may be appropriate and are otherwise consistent with this Ordinance.

Section 2. **Whitestown Compact Fund.**

(A) There is hereby created the Whitestown Compact Fund. All fees paid by a person or legal entity pursuant to the agreement described in Section 1 shall be deposited in the Whitestown Compact Fund, which shall be a non-reverting fund.

(B) The proceeds of the Whitestown Compact Fund may be disbursed or expended for any lawful purpose, including, but not limited to, any of the following:

(1) Any use for which the Town's General Fund may be used;

(2) Any use pursuant to the redevelopment powers and uses described at I.C, 36-7-14 *et seq.*, as amended, which shall be read as if all Town administrative agencies shall have the powers, and are able to implement the uses.

(C) Money in the Whitestown Compact Fund not currently needed to meet any obligations of the Fund may be invested in the same manner as other public funds may be invested. Interest that

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accrues from these investments shall be deposited in the Fund. Money in the Fund at the end of each particular year does not revert to the General Fund.

(D) All receipts and expenditures attributable to the Fund shall be processed, appropriated, claimed, and allowed in the same manner as other claims of the Town.

(E) The Whitestown Compact Fund shall be perpetual until terminated or amended by subsequent ordinance of the Town Council.

Section 3. Severability.

If any provision, paragraph, word, fee, section or article of this Ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections, and chapters shall not be affected and shall continue in effect, and in lieu of each provision that is found to be invalid, a provision shall be added that is as similar to invalid provision as may be possible and be valid.

Section 4. Conflicting Ordinances.

All other Ordinances and parts of other Ordinances inconsistent or conflicting with any part of this Ordinance are hereby superseded to the extent of such inconsistency or conflict.

Section 5. Effective Date.

This Ordinance shall take effect on the date of its adoption.

PASSED AND ADOPTED by the Whitestown, Indiana Town Council this 27th day of July, 2016.

THE TOWN COUNCIL OF THE TOWN OF WHITESTOWN, INDIANA	YAY/NAY
Eric Miller, President	Yes
Susan Austin, Vice President	Yes
Kevin Russell	YAY
Clinton Bohm	YAY
	YAY

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Jeffrey Wishek

ATTEST:

Matthew Sumner

Matthew Sumner, Clerk-Treasurer
Town of Whitestown, Indiana

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