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ORDINANCE NO. 2017-33

AN ORDINANCE AMENDING TEXT WITHIN THE UNIFIED DEVELOPMENT ORDINANCE OF THE TOWN OF WHITESTOWN, INDIANA

PROPOSED AMENDMENTS TO THE UDO

WHEREAS, the Petitioner, the Whitestown Plan Commission, seeks to amend the Whitestown Unified Development Ordinance; and

WHEREAS, pursuant to Indiana Code § 36-7-4-607, the Whitestown Plan Commission conducted the required public hearing and determined its favorable recommendation, by a 7-0 vote on 8/14/2017; and

WHEREAS, the Whitestown Plan Commission certified its favorable recommendation to the Whitestown Town Council on 8/14/2017; and

WHEREAS, pursuant to Indiana Code § 36-7-4-607, the Town Council of the Town of Whitestown, having considered the application and the recommendation of the Whitestown Plan Commission, now adopts the proposal and approves the text amendments, all as hereinafter set out.

IT IS THEREFORE CONSIDERED, ORDAINED, AND ADOPTED as follows:

Section 1. That the Applicant is the Whitestown Plan Commission.

Section 2. That the Applicant seeks to amend the text of the Whitestown Unified Development Ordinance for the purpose of permitting specific uses within the GB General Business Zoning District; establishing a minimum setback requirement for the Legacy Core District; establishing permit fees for non-profit organizations; and updates to the signage program.

The language the Applicant seeks to amend is attached hereto as **Exhibit A** and incorporated herein by reference.

Section 3. That the Town Council of Whitestown has paid reasonable regard to the comprehensive plan; current conditions and the character of structures and uses in each district; the most desirable use for which the land in each district is adapted; the conservation of property values throughout the jurisdiction; and responsible development and growth.

Section 4. That the Town Council hereby adopts/rejects the proposal of the Whitestown Plan Commission as certified, and hereby adopts/rejects **Exhibit A** as amendments to the Whitestown Zoning Ordinance.

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Section 5. In accordance with IC 36-5-2-10, this Ordinance shall be in full force and effect upon its passage.

ALL OF WHICH IS ADOPTED this 16 day of August, 2017, by the Town Council of the Town of Whitestown, Indiana.

TOWN COUNCIL OF WHITESTOWN, INDIANA.

Eric Miller, President

Clinton Bohm

Susan Austin

Jeff Wishek

Kevin Russell

ATTEST:

Matt Sumner, Town Clerk-Treasurer

Prepared by: Lauren Bailey

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Exhibit A

Ordinance Language to Amend

PROPOSED AMENDMENTS TO THE UNIFIED DEVELOPMENT ORDINANCE

The following proposed amendments to the UDO include:

1) Permitted Uses within the GB Zoning District
2) Minimum Setback Requirements for the Legacy Core
3) Permit fees for Non-Profit Organizations
4) Updates to Signage

1) PERMITTED USES WITHIN THE GB ZONING DISTRICT

BACKGROUND

This amendment clarifies the allowed uses within the GB General Business zoning district within the Town of Whitestown Town limits. This amendment is meant to allow specific uses within the GB district that better suits the district it surrounds. This amendment will encourage growth in the Community Development Areas as listed in the Comprehensive Plan with consideration of the surrounding properties.

I. Section 2.9.B of the Whitestown UDO shall be amended to show:

B. General Business-Uses.

1. Permitted Uses.	
• Dwelling - Multi-family Electrical Repair Shop • Electrical Supply Store • Elementary & Secondary Schools • Engineering & Architectural Service • Florists, Furriers • Fruits & Vegetables • Gift, Novelty & Souvenir Shops • Grocery, Bakery, Meat & Fish • Hardware or Variety Store • Hay, Grain, & Feed Stores • Hobby, Toy & Game Shops • Household Appliances, Furniture • Indoor Recreation Facility • Insurance Agents, Brokers & Service	• Candy, Nut & Confectionary • Charitable Institutions • China, Glassware, Metalware • Church or Temple • Civic, Social, or Religious Organizations • Clothing Rental • Coin Operated Laundry & Dry-cleaning • Collection Agencies • Counselor-At-Law • Customary Home

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- Jewelry Store
- Lumber & Building Materials Dealer
- Medical & Dental Laboratories
- Medical Office
- Monument Sales
- Wholesale Business
- Motion Picture Theater
- Municipal or Government Buildings
- Museums & Art Gallery
- Music Video Store
- News Dealers
- Newspaper Publishing

Occupation

- (Accessory Use)
- Dance Halls, Studios & Schools
- Department Store
- Detective Agencies & Protective
- Services
- Diaper Service
- Dinner Theater
- Disinfecting & Exterminating
- Services
- Drapery, Curtain & Upholstery
- Dressmaking

Permitted Conditional Uses.

- Automatic Car Wash
- Clinic
- Day Care Center
- Drive-In Restaurant
- Golf Driving Range & Miniature Golf Course
- Hotel or Motel
- Kennel, Small
- Parking Lot
- Liquor Store
- Food Processing
- Fraternity, Sorority or Student
- Minor Residential Subdivision
- Major Residential Subdivision
- Group Residential Facility
- Farm
- Drug Store
- Police, Postal, or Fire Station
- Publicly Owned Park or Recreational Facility
- Roadside Produce Stand
- Shopping Center
- Stable, Public
- Theater, Outdoor
- Truck Service Center
- Veterinary Animal Hospital
- Dwelling - Single-family
- Dwelling - Two-Family
- Carry Out Restaurant
- Lodge or Private Club
- Commercial Testing Laboratories

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Special Exceptions.	Special Exception Conditional Uses.
• Automobile Body Shop & Painting • Brewery • Landscape Contractor • Linen Supply • Fuel Dealers • Mortuary • Mobile Home, Travel Trailer, Camper Sales & Service	• Auction Sales Yard (Excluding Livestock) • Mineral Extraction • Penal or Correctional Institutions • Warehouse (General) • Warehouse (Grain Storage) • Wholesale Produce Terminal

2) MINIMUM SETBACK REQUIREMENTS WITHIN THE LEGACY CORE

BACKGROUND

Due to the nature of the lot sizes in the Legacy Core Subdivision of the Town of Whitestown side yard and front yard setback requirements are difficult to meet for new development. This amendment will allow new development to encroach into Town owned alleyways to count toward a minimum setback requirement per Town Council approval.

I. Section 2: Zoning Districts Development Standards shall be amended to include:
   a. Where encroachment into the public right-of-way is approved by the Town Council pursuant to Section 7.8.B.4, a setback line may be extended into an alley located within the Legacy Core, as defined in the Whitestown Comprehensive Plan Chapter 4.10.

II. Section 7.8.B.4 Lots and Setbacks
   a. Other.
      i. Whenever possible, unit shopping centers, based upon sound development standards, should be designed in contrast to the platting of lots for individual commercial use.
      ii. New development within the Legacy Core Subdivision may seek approval through the Town Council to allow encroachment to Town owned alleyways whenever setback requirements cannot be met due to lot sizes.

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3) PERMIT FEES FOR NON-PROFIT ORGANIZATIONS

BACKGROUND

The permit fee structure can be burdensome on non-profit organizations wanting to buy, rehab or remodel properties within town. Non-profit organizations oftentimes request approval to waive the permit fees in front of Council. The Whitestown Council discussed the possibility of giving the Town Manager authority to waive these fees. Any additional fees (Park Impact Fees, EDC Fees) cannot be waived.

I. Section 9.7.A Fee Schedule shall be amended to include:
   a. Permit Fees for Non-Profit Organizations may be waived per the Town Manager approval on an individual basis.

4) UPDATES TO THE SIGNAGE SECTION

BACKGROUND

The 2015 U.S. Supreme Court decision in *Reed v. Town of Gilbert, Arizona* imposed a clear requirement on all local governments that their sign regulations be "content neutral" (although commercial signage may still be regulated when it is misleading or fraudulent). Therefore, it seems important to indicate that the Town's first purpose in regulating signs is to uphold our constitutional rights as citizens to freedom of expression.
Also, the Indiana General Assembly has enacted three new statutes that call for partial deregulation of signs – one that allows billboards to be relocated when they are obstructed by state highway projects, another that declares a moratorium on sign enforcement during election campaigns, and yet another that authorizes sign owners to freely substitute noncommercial for commercial copy. Several additional amendments are needed to bring our UDO into conformity with these statutes. (There is also a typographical error that should be corrected.)

I. *Purpose*: Insert a new clause (1) in Section 4.5.A on page 99 of the UDO, and then renumber existing clauses (1)-(4) as (2)-(5), so that the first sentence of the paragraph reads as follows:
   a. "The purpose of this section is 1) to uphold the free interchange of thought and opinion, and the right of every person to speak, write, or print, freely, on any subject whatever, as guaranteed by federal and state law; 2) to encourage the effective use of signs as a means of communication in the town; 3) to maintain and enhance the aesthetic environment and the town's ability to attract sources of economic development and growth; 4) to minimize the possible adverse effect of signs on nearby public and private property; and 5) to enable the fair and consistent enforcement of these sign restrictions." [*Note*: The new language in clause (1) is derived from the text of the Constitution of the State of Indiana.]

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II. *Federal and State Requirements*: Substitute the following text for the third sentence of Section 4.5.B on page 99 of the UDO:

a. "Pursuant to IC 8-23-20-25.6, if a lawfully erected outdoor advertising sign (which sign is located along the interstate and primary system, or any other highway where control of outdoor advertising signs is required under 23 U.S.C. 131) is no longer visible or becomes obstructed, or must be moved or removed, due to a noise abatement or safety measure, grade changes, construction, directional signage, highway widening, or aesthetic improvement made by any agency of the state along the interstate and primary system or any other highway, the owner or operator of the outdoor advertising sign, to the extent allowed by federal or state law, may:

1. Elevate the outdoor advertising sign; or
2. Relocate the outdoor advertising sign to a point within 500 feet of its prior location, if the outdoor advertising sign complies with the applicable spacing requirements.

The elevated outdoor advertising sign or outdoor advertising sign to be relocated shall be the same size as the previous outdoor advertising sign. The purpose of this provision is to permit the owner or operator of the described sign to modify the sign without obtaining a new or amended sign permit, either by elevating the sign so that the entire advertising content of the sign is again visible, or by reinstalling the sign at an angle that makes the entire advertising content of the sign again visible, or a combination of both."

III. *Right to Install Signage During Election Season*: Rewrite Section 4.5.F.7 on page 100 of the UDO to read as follows:

a. "7. Pursuant to IC 36-1-3-11, any provision of Table 7 relating to the number or size of signs (the surface area of which is not greater than 32 square feet) is unenforceable during the following period:

1. Beginning 60 days before an election, as described in IC 3-5-1-2; and
2. Ending at the beginning of the sixth day after the election.

However, state law does not prohibit the town from enforcing Subsection 4.5.E (ILPs for Signs in the Public Right-of-way) as it relates to the number or size of signs at any time if necessary to ensure public safety. Therefore, this subsection does not prevail over the public safety prohibitions contained in Subsection 4.5.E."

IV. *Violations*: Delete the duplicate words "of this" in Section 4.5.J.5 on page 103 of the UDO.

V. *Enforcement and Remedies*: Rewrite Section 4.5.K on page 103 of the UDO to read as follows:

a. "A violation of this section shall be considered a violation of the Zoning Ordinance and shall be enforced in accordance with Section 9.6.B.2, except as provided in Subsection L."

VI. *Right to Substitute Noncommercial Copy*: Insert a new Section 4.5.L on page 103 of the UDO to read as follows:

a. "L. Right to Substitute Noncommercial Copy.

The owner of any sign that is otherwise allowed by this section may substitute noncommercial copy in place of any other commercial or noncommercial copy. This substitution of copy may be made without the issuance of any additional permit by the town. Pursuant to IC 36-7-4-1109(h), the purpose of this subsection is to prevent any inadvertent favoring of commercial speech over noncommercial speech, or the favoring of any particular noncommercial message over any other noncommercial message. This subsection prevails over any more specific provision in this section to the contrary."