

**ORDINANCE NO. 2019-02**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF WHITESTOWN,  
INDIANA, CONCERNING THE RECREATION IMPACT FEE ON  
NEW DEVELOPMENT PURSUANT TO I.C. § 36-7-4-1300 ET SEQ.  
REPLACING ORDINANCE NO. 2013-24**

**WHEREAS**, the Town Council (“Town Council”) of the Town of Whitestown, Indiana (“Town” or “Whitestown”) has determined that it is reasonable and necessary to promote and accommodate orderly growth and development and to promote the general public health, safety, and general welfare of the citizens of the Town by providing for an equitable program to fund the capital costs of new recreational infrastructure necessary to serve newly developing areas of the Town; and

**WHEREAS**, the Town Council has further determined that it is reasonable and necessary to promote the orderly development of the Town by maintaining standards by which the Town may require new developments to pay an impact fee representing the development’s proportionate share of the capital costs of new recreational infrastructure necessary to serve the new development; and

**WHEREAS**, because of the size of the Town, considering both its population and geographic area, as well as the distribution of public and private institutions, services, and other facilities throughout the Town, any park and recreational improvement benefits all citizens of the Town; and

**WHEREAS**, I.C. § 36-7-4-1300 et. seq. (“Act”) authorizes the Town Council to adopt an impact fee for parks and recreation purposes; and

**WHEREAS**, the Town Council previously adopted Ordinance 2013-24, An Ordinance of the Town Council of the Town of Whitestown, Indiana Establishing a Recreation Impact Fee on New Development Pursuant to I.C. § 36-7-4-1300; and

**WHEREAS**, the Town Council now desires to provide for a replacement impact fee ordinance as contemplated by I.C. § 36-7-4-1340; and

**WHEREAS**, the Town Council has appointed the Whitestown Impact Fee Advisory Committee pursuant to I.C. § 36-7-4-1312, to assist and advise the Town with regard to the re-adoption of an impact fee; and

**WHEREAS**, the Town has engaged H. J. Umbaugh & Associates, LLP (“Umbaugh”) to prepare a substantially updated Infrastructure Zone Improvement Plan for Parks and Recreation Facilities (“Zone Improvement Plan” or “Plan”), which is read in conjunction with and supplements the 2018 Whitestown Parks and Recreation Master Plan, which Zone Improvement Plan is attached hereto as Exhibit A and made a part hereof; and

**WHEREAS**, the Town has further consulted with HWC Engineering in preparing the Plan; and

**WHEREAS**, the Town Council finds that the Plan includes the following elements:

- a. a description of the nature and location of existing infrastructure in the impact zone;
- b. a reasonable determination of the current level of service provided within the impact zone;
- c. establishment of a reasonable community level of service for the impact zone;
- d. reasonable estimates relating to the nature and location of development that is expected within the impact zone during the next ten (10) year period;
- e. a reasonable estimate of the nature, location, and costs necessary to provide the community level of service for the developments contemplated in subparagraph (d) hereof, including the timing and sequencing of infrastructure installation;
- f. a general description of the sources and amounts of money used to pay for infrastructure during the previous five (5) years;
- g. provision for completion of the infrastructure that is necessary to raise the current level of service to the community level of service within the next ten (10) year period;
- h. a reasonable estimate of the nature, location, and cost of infrastructure that is necessary to raise the current level of service to the community level of service;
- i. a reasonable estimate of the revenue sources and amount of revenue sources that the Town intends to use to raise the current level of service to the community level of service for existing development; and

**WHEREAS**, prior to adoption of this Ordinance, the Town Council has and hereby reaffirms the adoption of the Plan as a part of the Whitestown Comprehensive Plan pursuant to I.C. § 36-7-4-500 et seq.; and

**WHEREAS**, the Whitestown Plan Commission, having conducted a public hearing upon, and given due deliberation to the Plan and this Ordinance, has forwarded a favorable recommendation of the Ordinance's adoption to the Town Council; and

**WHEREAS**, it is not the purpose of this Ordinance to deter growth, remedy existing infrastructure deficiencies through new development, or pay for maintenance or other non-capital costs not permitted by the Act; and

**WHEREAS**, it is the Town's objective, through the Plan, to calculate and maintain an impact fee that complies with the Act.

**NOW, THEREFORE, BE IT ORDAINED AND ENACTED** by the Town Council of the Town of Whitestown, Indiana, that:

1. **Incorporation of Recitals.** The above recitals are hereby incorporated herein by reference as though fully set forth and adopted.

2. **Impact Zone.** There is hereby reaffirmed one Infrastructure Impact Zone, the boundaries of which are co-terminus with the corporate boundaries of the Town, as such boundaries may be extended from time to time through annexation, and over which boundaries the Town exercises planning and zoning jurisdiction (“Impact Zone”). In this regard, the Town Council specifically finds that the geographical area in the Impact Zone ensures that (a) there is a functional relationship between the components of the Plan in the Impact Zone, (b) the Plan provides a reasonably uniform benefit to all citizens throughout the Impact Zone as of the adoption of this Ordinance, and (c) all areas within the Impact Zone are contiguous, as contemplated by I.C. § 36-7-4-1316.

3. **Application.** Except as provided herein, this Ordinance shall apply uniformly to all residential developments within the Impact Zone and for which the Town may require a structural building permit. This Ordinance shall not apply to:

- a. improvements which do not create a need for new and additional infrastructure, including the erection of a sign, construction of accessory structures or fences, or the alteration or renovation of an improvement where the use, or intensity thereof, has not changed;
- b. development meeting the requirements set forth in I.C. § 36-7-4-1322(g);
- c. the replacement of a destroyed or partially destroyed improvement provided that the replacement improvement does not create a need for new and additional infrastructure over and above the infrastructure needed by the original improvement prior to the destruction or partial destruction thereof; and
- d. non-residential development.

4. **Zone Improvement Plan.** The Town Council hereby finds that the Plan prepared by Umbaugh, and attached as Exhibit A, which as read in conjunction with and in supplement to the 2018 Whitestown Parks and Recreation Master Plan, constitutes a Zone Improvement Plan as contemplated by and in satisfaction of I.C. § 36-7-4-1318. The Town Council does hereby adopt the Plan, and reaffirms its addition to the Whitestown Comprehensive Plan.

5. **Park and Recreation Impact Fee.** The Town Council hereby finds that the impact fee recommended in the Plan meets the requirements of the Act, including I.C. §§ 36-7-4-1320 & 1321. Accordingly, the Town Council determines that the cost, and parks and recreation impact fee, for each residential dwelling unit and corresponding equivalency is as follows:

<u>Unit Type</u>	<u>Fee Amount (Per Unit)</u>	<u>Equivalent %</u>
Single-Family Home	\$1,511	100%
Multi-Family Home	\$1,149	76%

In the event that any parcel of real estate subject to the Plan undergoes a change in use, redevelopment, or a modification, which change requires a structural building permit and creates a need for new infrastructure, an impact fee will only be assessed for the increase in the burden on infrastructure.

Any person or entity otherwise obligated to pay the fee established by this Ordinance whose property was totally or partially destroyed by fire, storm or other casualty beyond his/her/its control, shall be exempt from said fee if he/she/it repairs or replaces the destroyed structure without creating a burden on infrastructure greater than the burden imposed by the destroyed infrastructure. In the event of such additional burden, the fee shall be calculated based only on the increased burden created by the structure.

6. **Credits.** Any person obligated to pay an impact fee pursuant to the terms of this Ordinance may request and, if entitled, shall receive a credit against the impact fee due in the manner and amount as provided in the Act, including I.C. § 36-7-4-1313 and I.C. § 36-7-4-1335. A request for credit shall be present prior to the issuance of the Improvement Location Permit. In the event the credit does not equal the amount of the total impact fee pursuant to the calculation provided for in this Ordinance, the remaining balance shall be due in accordance with this Ordinance.

In addition, pursuant to I.C. § 36-7-4-1337, a person or entity responsible for installing infrastructure or improvements and entitled to a credit under this section may designate in writing a reasonable and feasible method of allocating its credits to future fee payers who may be successors in interest to the credits earned by the fee payer or others.

7. **Impact Fee Due Upon Issuance of an Improvement Location Permit.** The impact fee imposed pursuant to the terms of this Ordinance shall be due and payable upon the issuance of an Improvement Location Permit by the Town. It is understood that the Improvement Location Permit is synonymous with the term “structural building permit” as that term is used in I.C. § 36-7-4-1323 and the Act, in that the issuance of an Improvement Location Permit authorizes the applicant to commence construction activities, structural or otherwise.

If the fee payer requests, an impact fee on a development will be assessed not later than thirty (30) days, or one hundred eighty (180) days for development identified under I.C. § 36-7-4-1322(b), after the earlier of:

- a. the date the fee payer obtains an Improvement Location Permit for the development; or
- b. the date that the fee payer voluntarily submits to the Town a development plan for the development and evidence that the property is properly zoned for the proposed development. The plan shall be in the form prescribed by the Whitestown Zoning

Ordinance and shall contain reasonably sufficient detail for the Town to calculate the impact fee.

For purposes of this section, “assessment” means the act of calculating the amount of the impact fee which shall be due.

For a phased development, the impact fee shall be prorated for purposes of payment according to the impact of the parcel for which an Improvement Location Permit is issued in relation to the total impact of the development.

In the event the total impact fee is greater than five thousand dollars (\$5,000), the fee payer may, at its option but no later than thirty (30) days after the assessment, request payments be made in equal payments according to an installment payment plan. The installment payment plan shall include the following:

- a. a maximum of five thousand dollars (\$5,000) or five percent (5%) of the impact fee, whichever is greater, is payable on the date the Improvement Location Permit is issued for the development on which the fee is imposed;
- b. the first installment is due and payable one (1) year after the date the Improvement Location Permit is issued for the development on which the fee is imposed;
- c. the last installment is due and payable two (2) years after the date the Improvement Location Permit is issued for the development on which the fee is imposed;
- d. the Town may impose a reasonable rate of interest, not to exceed the prejudgment rate of interest in effect at the time the interest accrues. If interest is charged, interest accrues only on the portion of the impact fee that is outstanding and does not begin to accrue until the date the Improvement Location Permit is issued for the development or part of the development on which the impact fee is imposed; and
- e. if all or part of an installment is not paid when due and payable, the amount of the installment shall be increased on the first day after the installment is due and payable by a penalty equal to ten percent (10%) of the installment amount that is overdue. If interest is charged, the interest shall be charged on the penalty amount.

An impact fee of five thousand dollars (\$5,000) or less shall be paid in full on the date the Improvement Location Permit is issued for the development on which the impact fee is imposed.

8. **Park and Recreation Impact Fee Fund.** There is hereby reaffirmed the Park and Recreation Impact Fee Fund (“Fund”) of the Town. The Fund shall be a non-reverting fund and shall receive impact fees collected pursuant to this Ordinance or the Act, to be utilized in connection with the purposes set forth herein. Said Fund shall consist initially of one account

based upon the current existence of one Impact Zone. In the event that an additional Impact Zone is created thereafter, a separate account shall be maintained for each separate Impact Zone established within the Town. Interest earned on the Fund or on any account with the Fund shall be deposited and maintained within the Fund or the separate account. The Whitestown Clerk-Treasurer shall maintain records of the status of the Fund and shall make an annual report of said Fund to the Whitestown Plan Commission and Town Council.

Pursuant to I.C. § 36-7-4-1332(e), the Clerk-Treasurer is designated as the Town official responsible for acting on refund requests.

9. **Lien Rights.** Pursuant to I.C. § 36-7-4-1325, the Town acquires a lien against the real estate which is the subject of the impact fee on the date an Improvement Location Permit is issued for such property. Upon adoption, this Ordinance may be recorded as additional constructive notice of the lien rights of the Town with respect to a parcel of real estate which is the subject of an impact fee. The Town may, in its discretion, file a specific instrument setting forth its lien rights with respect to a parcel of real estate which is the subject of an impact fee. Recording this Ordinance or any instrument is not a prerequisite to exercising the Town’s lien rights pursuant to the Act.

10. **Form of Receipt.** The Whitestown Clerk-Treasurer shall issue a receipt for any impact fee payment in the following form, which is intended to be consistent with the Town’s standard form of receipts utilized by the Whitestown Clerk-Treasurer:

Receipt #: _____	Whitestown	Receipt Date: _____
Received of : _____		Payment Amt: _____
		Change Given: _____
For: Parks & Recreation Impact Fees for _____		
<u>Account Distribution:</u> _____	Impact Fee Fund _____	Total Amount:  _____
		Received by _____
	_____ Clerk Treasurer Town of Whitestown, Indiana	

11. **Use of Impact Fees Collected Pursuant to this Ordinance.** An impact fee collected pursuant to the provisions of this Ordinance may be utilized by the Town only for the following purposes, acting by and through its Town Council, which for the purposes of this Ordinance is identified as the infrastructure agency contemplated by I.C. § 36-7-4-1317:

- a. Providing funds to be utilized by the Town for the provision of a new park and recreational infrastructure that is needed to serve the new development in the Impact Zone and that is identified in the Plan;
- b. An amount not to exceed Five Percent (5%) of the annual collections of the fee may be utilized for expenses incurred by the Town for the consulting services used to establish this Ordinance;
- c. To pay a refund due pursuant to the terms of this Ordinance or the Act;
- d. To pay the debt service cost of an obligation issued to provide new park and recreational infrastructure described in sub-paragraph (a) above.

12. **Whitestown Impact Fee Review Board.** The Town Council hereby re-establishes an Impact Fee Review Board (“Board”) as follows:

- a. The Board shall consist of three (3) citizen members appointed by the Town Council President and who shall qualify as follows:
  - 1. One (1) member shall be a real estate broker licensed in Indiana;
  - 2. One (1) member shall be an engineer licensed in Indiana;
  - 3. One (1) member shall be a certified public accountant.
- b. A Board member shall not be a member of the Whitestown Plan Commission.
- c. The term of office of the members of the Board shall commence from the date of their appointment and expire four (4) years from the date of appointment. At the expiration of any term, each member shall continue to serve until his/her successor is appointed and qualified. Board members serve at the pleasure of the Town Council President, and may be removed with or without cause.
- d. In the event a member is unable to hear a petition due to a conflict of interest, the Town Council President shall fill such vacancy with a temporary member meeting the qualifications of the member having a conflict of interest. A temporary member shall serve for the period necessary to dispose of the petition giving rise to the conflict and only for purposes of such petition.
- e. The Board shall be governed by I.C. § 36-7-4-1338(c) and all other applicable provisions of the Act.

13. **Appeals.** Any fee payer who believes itself to be aggrieved by the calculation of the impact fee may appeal from such calculation to the Whitestown Impact Fee Review Board as set forth in the Act, and the Whitestown Impact Review Board shall act upon and hear such appeal as provided in the Act. The fee payer shall bear the burden of going forward with the evidence and shall present evidence addressing either of the following:

- a. that a fact assumption used in determining the amount of the impact fee is

incorrect; or

- b. that the amount of the impact fee is greater than the amount allowed under I.C. § 36-7-4-1320, 1321, and 1322.

An appeal under this section must be filed not later than thirty (30) days after the issuance of the Improvement Location Permit. The appeal shall be initiated with the filing of a Petition for Review with the Whitestown Clerk-Treasurer's Office together with a filing fee in the amount of one hundred dollars (\$100.00).

The Petition for Review shall be in a form calculated to inform the Whitestown Impact Fee Review Board of the nature of complaint, the parties to the action, and relief requested. In addition, the petition shall describe the new development on which the impact fee has been assessed, all facts related to the assessment of the impact fee, and the reasons the petitioner believes that the amount of the impact fee assessed is erroneous or is greater than the amount allowed by the fee limitation set forth in the Act.

The Town shall not deny the issuance of an Improvement Location Permit on the basis that the impact fee has not been paid, or condition issuance of the permit on the payment of the impact fee. However, if the impact fee totals one thousand dollars (\$1,000.00) or less, the Town may require the fee payer to pay the impact fee or initiate an appeal under this section before the Improvement Location Permit is issued.

14. **Conflicts with the Act.** It is the intent of the Town to comply with the Act, and this Ordinance shall be construed in all respects to be consistent with the Act. The substantive and procedural requirements of I.C. § 36-7-4-1300 et seq. shall control in the event of conflicts, which are unintended by the Town Council. Any provisions of the Act required to be included in or a part of this Ordinance are hereby deemed incorporated herein and adopted as a part hereof.

15. **Effective Date and Expiration.** This Ordinance shall be in full force and effect six (6) months after its adoption by the Town Council in accordance with I.C. § 36-7-4-1340. This Ordinance shall expire five (5) years after its effective date as required by I.C. § 36-7-4-1340, unless action is undertaken to extend this Ordinance consistent with Indiana law.

16. **Construction of Clause Headings.** The clause headings appearing herein have been provided for convenience and reference and do not purport and shall not be deemed to define, limit, or extend the scope or intent of the clause to which they appertain.

17. **Repeal of Conflicting Ordinance Provisions.** The provisions of all other Town ordinances in conflict with the provisions hereof, if any, are of no further force or effect and are hereby repealed to the extent of such conflict.

18. **Severability.** If any part of this Ordinance shall be held as invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remainder of this Ordinance.



**DULY PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2019, by the Town Council of the Town of Whitestown, Indiana.

THE TOWN COUNCIL OF THE TOWN  
OF WHITESTOWN, INDIANA

YAY/NAY

\_\_\_\_\_  
Clinton Bohm, President

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\_\_\_\_\_  
Susan Austin, Vice-President

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\_\_\_\_\_  
Eric Miller, Member

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Kevin Russell, Member

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Jeffrey Wishek, Member

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**ATTEST:**

\_\_\_\_\_  
Matt Sumner, Clerk-Treasurer  
Town of Whitestown, Indiana

3557493

# EXHIBIT A