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ORDINANCE 2016-24

AN ORDINANCE CONCERNING THE USE OF FIREWORKS WITHIN THE TOWN OF WHITESTOWN

WHEREAS, pursuant to Ind. Code § 22-11-14-10.5 ("Act"), the Town of Whitestown ("Town" or "Whitestown") may adopt an ordinance concerning the use of consumer fireworks within the corporate limits of the Town; and

WHEREAS, the Whitestown Town Council ("Town Council") finds that it is in the public interest of Whitestown and its citizens to provide certain regulations as to the appropriate use of consumer fireworks within the Town.

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

Section 1. **Consumer Fireworks**. Legal consumer fireworks, as defined in Ind. Code § 22-11-14-1, may be used, ignited, or discharged within Whitestown only during the following dates and times:

a. between the hours of 2:00 p.m. and 10:30 p.m. on January 1;

b. between the hours of 10:00 a.m. and 10:30 p.m. on any day in which the official Indianapolis 500 race is held (typically, the Sunday before Memorial Day);

c. between the hours of 5:00 p.m. and 10:30 p.m. on the two days immediately prior to Memorial Day;

d. between the hours of 2:00 p.m. and 10:30 p.m. on Memorial Day;

e. between the hours of 5:00 p.m. and 10:30 p.m. on any Friday or Saturday after Memorial Day and before Labor Day;

f. between the hours of 5:00 p.m. and 11:00 p.m.* (or two hours after sunset, in the event sunset is later than 9:00 p.m. on such date(s)) on June 29, June 30, July 1, July 2, July 3, July 5, July 6, July 7, July 8, and July 9;

g. between the hours of 10:00 a.m. and 12:00 (Midnight) on July 4;

h. between the hours of 5:00 p.m. and 10:30 p.m. on the two days immediately prior to Labor Day;

i. between the hours of 2:00 p.m. and 10:30 p.m. on Labor Day;

j. between the hours of 10:00 a.m. on December 31 and 1:00 a.m.* on January 1; and

k. on any other day designated by the Town Council for public fireworks display, between the hours of 2:00 p.m. on such day and 11:00 p.m. on such day.

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Where any of the times listed above apply to the same date in a particular year, the least restrictive times for such date shall apply.

*Note that IC 22-11-14-6(c)(1) could be read to create an infraction for using consumer fireworks during times required to be permitted in IC 22-11-14-10.5(c)(3)(A) and (C). Because IC 22-11-14-10.5(c)(3)(A) and (C) requires that those times be permitted, this Ordinance complies with those subsections.

Section 2. Location and Debris. Consumer fireworks may be used, ignited, or discharged during the permitted times set forth above only on the users' own property, with the permission of the property owner, or at special discharge locations designated by the State Fire Marshal or Whitestown Fire Chief. No person may use, ignite, or discharge fireworks on any public street or public property, including but not limited to parks, without the written permission of the State Fire Marshal or Whitestown Fire Chief. Users shall be responsible for all debris resulting from the discharge of consumer fireworks. It is a violation of this Ordinance if fireworks land upon property owned or occupied by another person from which permission was not obtained, or upon public streets or property, and which fireworks and/or all related debris is not removed by the user within twenty-four (24) hours of such use or discharge. Notwithstanding the foregoing, nothing in this Ordinance shall be interpreted to grant permission to any person to discharge, place, or land debris on property occupied or owned by another, and the twenty-four (24) hour removal period required by this Ordinance shall not relieve any such user of any applicable civil liability, including but not limited to a cause of action for trespass or nuisance.

Section 3. Smoking at Public Fireworks Display. Smoking, as well as the inhalation or exhalation of vapors or other substances from electronic cigarettes, is prohibited on the property used by the Town of Whitestown for any community fireworks display.

Section 4. Possession & Consumption of Alcohol at Public Fireworks Display. The possession and/or consumption of alcohol is prohibited on the property used by the Town of Whitestown for any community fireworks display, unless both the Town Council and the property owner approve, in writing, a special permit authorizing such possession and/or consumptions prior to the date of the event.

Section 5. Special Permits. Applications for a permit for relief from the regulations contained in this Ordinance may be made in writing to the Town Manager, Whitestown Fire Chief, or the Town Manager's duly authorized representative prior to a violation. Any permit granted by the Town Manager, Whitestown Fire Chief, or the Town Manager's duly authorized representative, in his or her sole discretion, must be in writing and shall contain all conditions upon which said permit shall be effective. In granting any such permit, the Town Manager, Whitestown Fire Chief, or duly authorized representative, may prescribe any reasonable conditions or requirements he or she deems necessary to minimize adverse effects upon the community or the surrounding neighborhood.

Section 6. Violation Penalty. Any person and/or property owner who violates the provisions of this Ordinance shall be guilty of an infraction, punishable by fines as follows:

(1) First offense: up to $75;
(2) Second offense: up to $100;
(3) Third offense: up to $150;
(4) Fourth offense: up to $200;

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(5) Fifth offense: up to $250;
(6) Sixth and subsequent offenses: up to $300.

Each day or continued violation (even if on the same day) constitutes a separate and additional offense.

Section 7. Severability. The provisions of this Ordinance are severable, and the invalidity of any phrase, clause, or part of this Ordinance shall not affect the validity or effectiveness of the remainder of this Ordinance.

Section 8. Superseding Clause. This Ordinance shall be interpreted and enforced consistent with the Act, as may be amended. Should the Act or another similar law applicable to Whitestown be amended to require more or less restrictive terms for the use of consumer fireworks, then such amendment(s) shall be considered incorporated into this Ordinance and this Ordinance shall be interpreted to be consistent with such required terms set forth in the Act or other similar law. All ordinances or parts of ordinances inconsistent or in conflict with the terms of this Ordinance are superseded to the extent of such inconsistency or conflict.

Section 9. Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval, and publication according to the laws of the State of Indiana.

Adopted by the Town Council of the Town of Whitestown, Indiana, on the 12 day of Oct, 2016.

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

ATTEST:

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Matt Sumner, Clerk-Treasurer
Town of Whitestown, Indiana

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