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ORDINANCE NO. 2016-42

AN ORDINANCE ADOPTING THE PROPOSED TEXT AMENDMENTS TO THE WHITESTOWN UNIFIED DEVELOPMENT ORDINANCE (UDO)

Zoning Ordinance Amendments

WHEREAS, the Petitioner, the Whitestown Plan Commission, seeks to adopt the proposed text amendments to the Whitestown Unified Development Ordinance; and

WHEREAS, pursuant to Indiana Code § 36-7-4-606, the Whitestown Plan Commission conducted the required public hearing and determined its favorable recommendation, by a 7 to 0 vote, on September 12, 2016; and

WHEREAS, the Whitestown Plan Commission certified its favorable recommendation to the Whitestown Town Council on September 12, 2016; and

WHEREAS, pursuant to Indiana Code § 36-7-4-606, 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 to the Unified Development Ordinance, 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 adopt the proposed text amendments to the Whitestown Unified Development Ordinance (UDO) to update and correct technical terms, section and chapter references in accordance with IC 36-7-4-606.

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

Section 3. That the Town Council hereby adopts/rejects the proposal of the Whitestown Plan Commission as certified, and hereby adopts/rejects **Exhibit A** as the Town of Whitestown Unified Development Ordinance.

Section 4. In accordance with IC 36-7-4-610(e) and (f)(2), after adoption, copies of the Town of Whitestown Unified Development Ordinance shall promptly be filed in the office of the Clerk-Treasurer of the Town of Whitestown. These copies shall be kept on file in the office for public inspection as required by IC 36-1-5-4.

Section 5. In accordance with IC 36-7-4-610(a), the Whitestown Plan Commission shall publish a notice of adoption in accordance with IC 5-3-1 which notice must: (1) summarize the subject matter of the ordinance (a Unified Development Ordinance for the Town of Whitestown); (2) give the date of its adoption by this Council; (3) specify the areas that will be directly affected by the ordinance (all real property within the corporate boundaries of the Town of Whitestown); (4) specify the penalties for violations of the ordinance (a civil penalty of not more than $300 per each day of violation); and (5) give two locations open to the public where the entire text of the ordinance will be available for inspection (the office of the Clerk-Treasurer and the office of the Chief of Police of the Town of Whitestown).

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Section 6. In accordance with IC 36-7-4-610(e), the Unified Development Ordinance shall take effect fourteen (14) days after the final day on which notice of its adoption is published pursuant to Section 5 above.

ALL OF WHICH IS ADOPTED this 14 day of September, 2016, by the Town Council of the Town of Whitestown, Indiana.

TOWN COUNCIL OF WHITESTOWN, INDIANA.

Eric Miller, President

Jeff Wishek

Susan Austin

Clinton Bohm

Kevin Russell

ATTEST:

Matt Sumner, Town Clerk-Treasurer

Prepared by: Lauren Bailey

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Exhibit A

Unified Development Ordinance (UDO)

LEGAL MEMORANDUM

TO: Lauren Bailey

FROM: John R. Molitor
Counsel to the Whitestown Plan Commission

DATE: August 25, 2016

RE: Technical Corrections Recommended for the
Whitestown Unified Development Ordinance (UDO)

In reviewing the provisions of the UDO for issues that might cause future legal problems, I discovered that numerous citations in the UDO still referenced old provisions that had appeared in the prior Zoning and Subdivision Control Ordinances. These citations had not been updated when the UDO was enacted last year. Therefore, most of the entries in the following list reflect the need to update and/or correct citations to provisions within the UDO itself.

In addition, a few items in the list would have a substantive effect but are intended only to allow the Town and/or Plan Commission to avoid unintended disputes that could result in costly litigation. These relate to sign regulation, the official responsibility for ordinance enforcement, and restrictions on sexually oriented businesses, respectively. These items are starred and include explanatory notes as to their purpose.

Here are my recommended technical corrections to the UDO as currently published:

Page 3 – In Subsection B.1, update the citation "Section 1.a" to Subsection A.1.a". Also, correct the spelling of "Whitestown".

Page 3 – In paragraph 4, rewrite to state that the Whitestown Unified Development Ordinance "took effect July 1, 2015".

Page 9 – In Subsection B, update the citation "Section XII.C.d" to "Section 9.3.E.4".

Page 17 – In paragraph 5, update the citation "Section XII.C.d" to "Section 9.3.E.4".

Page 66 – In Subsection A, update the citation "section" to "Chapter".

Page 69 – Correct the heading "A. Uses" to "C. Uses"

Page 69 – In paragraph 1, update the citation "Section V.C1.f" to "Section 9.3.E.4".

Page 69 – In paragraph 3, update the citation "Section V.C1.f" to "Section 9.3.E.4".

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Page 69 – In paragraph 6, update the citation "Section XII.C.d" to "Section 9.3.E.4".

Page 71 – Correct the heading "A. Development Standards" to "D. Development Standards"

Page 73 – In paragraph 9.a, update the citation "Section IV.P. Parking and Loading Requirements" to "Section 4.4".

Page 74 – In paragraph a, update the citation "Section IV.Q. Bufferyards" to "Section 4.1".

Page 76 – In paragraph iii, update the citation "requirements of Section V.C.1.j.iii Roofs above" to "other requirements of this paragraph".

Page 77 – Correct the heading of "B. Procedures." To "E. Procedures."

Page 77 – In paragraph 1, update the citation "Section IX. Review and Approval of Development Plans" to "Section 9.4".

Page 77 – In paragraph 2.a, update the citation "Section V.C.1.j.viii. Suitability of Exterior Building Materials" to "Subsection D.12.h".

Page 77 – In paragraph b, update the citation "Section V.C.1.j. Architectural Design Requirements" to "Subsection D.12". In the same paragraph, update the citation "section" to "provisions".

Page 78 – In paragraph c, update the citation "Section V.C.1. I-65 South Corridor Overlay District beginning with Section V.C.1.h. Minimum Tract Size" to "Subsections D.3 and D.4".

Page 83, In paragraph 2, update the citations "Table 7, Bufferyard Requirements" to "Table 1" (3 occurrences).

Page 91 – In Subsection A, update the citation "Section X. Non-conforming Uses" to "Chapter 8".

Page 101 – In Subsection J.1, update the citation "Section IV.Q. Bufferyards" to "Section 4.1".

Page 101 – In Subsection J.3, update the citation "Section IV.Q. Bufferyards" to "Section 4.1".

Page 101 – In Subsection J.5, update the citation "Table 8, Loading Berth Requirements and Distance from Residential Uses" to "Table 6".

Page 105 – In Subsection B, update the heading to read "Federal and State Requirements." In the text of Subsection B, update the citation "The Highway Advertising Control Act of 1967" to "the Federal Highway Beautification Act of 1965 and the Indiana Code provisions regulating billboards and junkyards, IC 8-23-20,". Also, replace "Act" with "statutes" (2 occurrences in this subsection).

Page 105 – In Subsection C, update the citations "Table 11, Sign Regulations" to "Table 7" (3 occurrences in this subsection).

Page 106 – In Subsection E.1, update the citation "Table 11, Sign Regulations" to "Table 7".

Page 108 – In paragraph d, update the citation "Table 11, Sign Regulations" to "Table 7".

Page 109 – Before the text at the beginning of Subsection K, insert the designation "1." At the end of the text, insert ", except as provided in paragraph 2."

*Page 109 – After Subsection K, add the following paragraph:

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"2. Notwithstanding any other provision of this section, the owner of any sign that otherwise complies with all Town ordinances may substitute non-commercial copy in lieu of a commercial message or any other commercial or non-commercial copy. This substitution of copy may be made without the issuance of any additional ILP or other approval of the sign. The purpose of this substitution provision is to prevent any inadvertent favoring of commercial speech over non-commercial speech, or the favoring of any particular non-commercial message over any other non-commercial message."

*Page 111 – Delete the following footnotes from the Legend for Table 7: a, b, c, d, e, f, g, and i.

(NOTE: The purpose of the above changes indicated for pages 109 and 111 is to bring the UDO into conformity with the U.S. Supreme Court's 2015 decision which has overturned many local sign regulations across the country.)

Page 113 – In Subsection B.2, update the citation "Section XV. General Definitions" to "Chapter 11".

Page 113 – In Subsection B.4.a, update the citation "Section XV. General Definitions" to "Chapter 11".

Page 114 – In Subsection E.2.a.ii, update the citation "in Table 3, Residential Uses and Requirements" to "for the district".

Page 118 – In Subsection B, update the citation "in accordance with Table 2, Authorized Uses" to "in connection with the permitted uses listed in each district".

Page 141 – In the heading for Section 20, correct "GOLD" to "GOLF".

Page 146 – In paragraph i, update "Section IV.U. Signs" to "Section 4.5".

Page 161 – On the first line of the page, update the citation "in Table 5, Residential Uses and Requirements – Mobile Home Parks Established after January 1, 1999" to "for the district".

Page 195 – In paragraph d, update "Bufferyards section of the Zoning Ordinance" to "Section 4.1".

Page 195 – In paragraph e, after "Perimeter Landscaping." insert "See Table 9."

Page 229 – In Subsection B, delete the phrase "As noted in Table 4," (this table appeared only in a prior ordinance).

Page 247 – In Subsection E.2, update the citation "Section IX. Review and Approval of Development Plans" to "Section 9.4".

Page 250 – In paragraph g, update the citation "subsection 6 of this Section" to "paragraph 7 below".

Page 250 – In paragraph k, update the citation "Zoning Ordinance" to "PUD District Ordinance".

Page 253 – In paragraph 2.a, delete the parenthetical phrase "(see Table 2, Authorized Uses)" (this table appeared only in a prior ordinance).

Page 255 – In paragraph b, update the phrase "review by certiorari" to "judicial review pursuant to IC 36-7-4-1600 et seq".

Page 257 – In paragraph d.ii, update the citation "Section IX.C Performance Guarantees" to "Subsection C below".

Page 263 – In Subsection C, update the citation "the ordinance enacted pursuant to its terms or the Subdivision Control Ordinance" to "this ordinance". Also in Subsection C, update the citation "these ordinances, pursuant to its terms" to "this ordinance".

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Page 269 – In paragraph f, insert a space between "IC" and 36-7-4-708".

Page 269 – In paragraph 2, update the citation "the requirements of Table 3, Residential Uses and Requirements – Single Family and any other sections" to "the zoning standards".

Page 269 – In paragraph 2.a, update the citation "the applicable section of the Subdivision Control Ordinance" to "paragraph 1 above".

Page 269 – In paragraph 2.b.i, update the citation "Table 3, Residential Uses and Requirements – Single Family" to "the zoning standards for the district".

Page 269 – In paragraph 2.e, update the citation "IC 36-7-4-921" to "IC 36-7-4-1015".

Page 273 – In paragraph 4.a, update the citation "the previous section regarding Primary Plat Application" to "paragraph 3 above".

Page 280 – In paragraph 4.b, update the citation "the previous section regarding Primary Plat Application" to "paragraph 3 above".

Page 287 – In paragraph b, update the citation "the previous section regarding Primary Plat Application" to "paragraph 3 above".

Page 298 – Delete the definition of ACCESS STREET, MARGINAL (this references a definition that does not appear in this ordinance).

Page 298 – Delete the definition of ACT (all Act references are being updated to the Federal or State code provisions).

*Page 298 – Substitute the following text for the definition of ADMINISTRATOR: "The Director of Planning, or a person designated by the Director of Planning to provide staff support to the WPC or WBZA, or to enforce the provisions of the Whitestown Unified Development Ordinance."

(NOTE: The prior definition specified that the Town Manager was the Administrator.)

*Page 298 – After the definition of ADMINISTRATOR, insert the following definitions:

"ADULT BOOK STORE. An establishment having as a preponderance of its stock in trade or its dollar volume in trade, books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records, or other forms of visual or audio representations which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas."

"ADULT CABARET. A night club, bar, theater, restaurant, or similar establishment which features live performances by topless and/or bottomless dancers, go-go dancers, exotic dancers, strippers, or similar entertainers, where such performances are distinguished or characterized by their emphasis on specified sexual activities or by exposure of specified anatomical areas and/or which regularly feature films, motion pictures, video cassettes, slides, or other photographic reproductions which are distinguished or characterized by an emphasis on specified sexual activities or by exposure of specified anatomical areas for observation by patrons."

"ADULT DRIVE-IN THEATER. An open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions, and other forms of visual productions, for any form of consideration, to persons in motor vehicles or on outdoor seats in which a preponderance of the total

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presentation time is devoted to the showing of materials distinguished or characterized by an emphasis on specified sexual activities or by exposure of specified anatomical areas for observation by patrons."

"ADULT LIVE ENTERTAINMENT ARCADE. Any structure which contains or is used for commercial entertainment where the patron directly or indirectly is charged a fee to view from an enclosed or screened area or booth a series of live dance routines, strip performances, or other gyrational choreography which performances are distinguished or characterized by an emphasis on specified sexual activities or by exposure of specified anatomical areas."

"ADULT MINI-MOTION PICTURE THEATER. Any structure which contains or is used for commercial entertainment where the patron directly or indirectly is charged a fee, with a capacity of more than five (5) but less than fifty (50) persons, used for presenting films, motion pictures, video cassettes, slides, or similar photographic reproductions in which a preponderance of the total presentation time is devoted to the showing of materials which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or by exposure of specified anatomical areas for observation by patrons therein."

"ADULT MOTION PICTURE ARCADE. Any place to which the public is permitted or invited where coin or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas."

"ADULT MOTION PICTURE THEATER. Any structure which contains or is used for commercial entertainment where the patron directly or indirectly is charged a fee, with a capacity of fifty (50) or more persons used for presenting films, motion pictures, video cassettes, slides, or similar photographic reproductions in which a preponderance of the total presentation time is devoted to the showing of materials which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons therein."

"ADULT SERVICE ESTABLISHMENT. Any structure, premises, or other facility, or any part thereof, under common ownership or control which provides a preponderance of services involving specified sexual activities or display of specified anatomical areas."

(NOTE: The purpose of the above additions is to bring the UDO into conformity with various U.S. Supreme Court decisions which require precise definitions in laws regulating sexually oriented businesses. These definitions are substantively identical to those that appear in the Boone County Zoning Ordinance, and were previously in effect in Whitestown.)

Page 299 – Delete the definition of AUTOMOTIVE, MOBILE HOME, TRAVEL TRAILER, FARM IMPLEMENT AND CONSTRUCTION MACHINERY SALES AREA (the term is not used in the ordinance).

Page 299 – Shorten the definition of BATTERY to read "An electrochemical storage device."

Page 299-300 – In the definition of BUILDING, delete the second sentence (which references a section of a prior ordinance).

Page 300 – In the definition of BUILDING INSPECTOR, update "WPC" to "Town". (All building inspectors are now employees of the Town, not the Plan Commission.)

Page 300 – Change the definition of "CHURCH OR TEMPLE" to "RELIGIOUS INSTITUTION" (with the entire text of the definition left unchanged); then insert the renamed definition in the correct alphabetical order within Chapter 11.

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Page 301 – In the definition of COMMITMENT, after "WPC", insert ", the WBZA,"; and update "the appropriate legislative body" to "the Town Council, pursuant to IC 36-7-4-1015".

Page 301 – Delete the definition of CONDOMINIUM (the term is not used in the ordinance).

Page 302 – In the definition of CONFINED FEEDING OPERATION, update clauses 1-4 so that they read as follows:

1. Any confined feeding of three hundred (300) or more cattle, six hundred (600) or more swine or sheep, thirty thousand (30,000) or more fowl, or five hundred (500) or more horses;
2. Any animal feeding operation where the operator elects to be subject to IC 13-18-10;
3. Any animal feeding operation that is causing a violation of the State's water pollution control laws or rules; or
4. Any animal feeding operation that is causing a violation of IC 13-18-10.

Page 302 – Delete the definition of COOPERATIVE (the term is not used in the ordinance).

Page 303 – In the definition of DEVELOPMENT REQUIREMENT, update the citation "Section IX. Review and Approval of Development Plans" to "Section 9.4".

Page 303 – In the definition of DEVELOPMENT REQUIREMENT, correct "IC 36-74-1403" to "IC 36-7-4-1403".

Page 304 – Change the definition of "ESTABLISHMENT OF AN ADULT ENTERTAINMENT BUSINESS" to "ESTABLISHMENT OF A SEXUALLY ORIENTED BUSINESS". In clauses 2 and 3, update "adult entertainment" to "sexually oriented" (4 occurrences in these clauses).

Page 308 – Delete the definition of MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS CODES (the term is not used in the ordinance).

Page 309 – In the definition of MOBILE HOME, update clauses 1-3 so that they read as follows:

1. Factory assembled;
2. Transportable;
3. Intended for year-round occupancy;
4. Designed for transportation on its own chassis; and
5. Manufactured before the effective date of the Federal Manufactured Housing Construction and Safety Standards Law of 1974 (42 U.S.C. 5401 et seq.).

Page 309 – Replace the definition of MOBILE HOME PARK with the following text: "A mobile home community, as defined in IC 16-41-27-5, which includes one (1) or more parcels of land that have all of the following characteristics:

1. The parcels are subdivided and contain individual lots that are leased or otherwise contracted;
2. The parcels are owned, operated, or under the control of one (1) or more persons; and
3. Where a total of at least five (5) mobile homes or manufactured homes are located for the purpose of being occupied as principal residences.

"Pursuant to IC 16-41-27-5, the term MOBILE HOME PARK also includes all of the following: (i) All real and personal property used in the operation of the park; (ii) A single parcel; (iii) Contiguous but separately owned parcels if they are jointly operated; (iv) Two (2) or more parcels that are separated by other parcels, but are jointly operated and connected by a private road; (v) One (1) more parcels, if at least two (2) of the mobile homes or manufactured homes located on the land are either (A) accessible from a private road or interconnected private roads; (B) served by a common water distribution system; or (C) served by a common sewer or septic system."

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Page 310 – Delete the definition of OWNER (the term was defined for use in a prior ordinance).

Page 310 – Delete the definition of PLANNER (the term is not used in the ordinance).

Page 310 – Substitute the following text for the definition of PRINCIPAL USE: "See 'Primary Use.'" Also, elsewhere in the ordinance, substitute the term "primary use" for "principal use" (the term occurs on pages 75, 145, and 298).

Page 311 – Delete the definition of PRIVATE SCHOOL (the term is not used in the ordinance).

Page 312 – In the definition of PUBLIC UTILITY, update "municipal or public utility" to "municipally owned or investor owned utility".

Page 312 – In the definition of PUBLIC WATER UTILITY, update "municipal or public water utility" to "municipally owned or investor owned water utility".

Page 313 – In the definition of SANITARY LANDFILL, after "include" insert "an Open Dump,".

Page 313 – Delete the definition of SEPTIC SYSTEM, PRIVATE (the term is not used in the ordinance).

*Page 313 – After the definition of SETBACK LINE, insert the following definition:

"SEXUALLY ORIENTED BUSINESS. An adult book store, adult cabaret, adult drive-in theater, adult live entertainment arcade, adult mini-motion picture theater, adult motion picture arcade, adult motion picture theater, adult service establishment, or massage establishment."

(NOTE: The purpose of the above addition is to bring the UDO into conformity with various U.S. Supreme Court decisions which require precise definitions in laws regulating sexually oriented businesses. This definition is similar to one that appears in the Boone County Zoning Ordinance.)

Page 315 – In the definition of SOLID WASTE, update the citation "(P.L.143-1985, Section 90)" to ", pursuant to IC 13-11-2-205(a)(3)".

Page 316 – Substitute the following text for the definition of SOLID WASTE TRANSFER STATION: "See 'Transfer Station.'"

Page 317 – After the definition of SUBDIVISION, insert the following definition:
"SUBDIVISION CONTROL ORDINANCE: The provisions of Chapters 6 and 7 of this ordinance. See Chapter 1 hereof."

Page 317 – After the definition of THOROUGHFARE PLAN, delete "WPC".

Page 317 – Substitute the following for the definition of TOWN: "The Town of Whitestown."

Page 318 – Substitute the following text for the definition of ZONING ORDINANCE: "The provisions of this Whitestown Unified Development Ordinance, except for Chapters 6 and 7 of this ordinance. See Chapter 1 hereof."

The following UDO text amendments are specific to down-lighting requirements, defining the brewery term and the allowed districts and sections in which require text amendments to include this language.

BACKGROUND

This text amendment clarifies the definition and the zoning districts where the brewery use is allowed. Breweries are typically an ancillary use to the main use and may include production, distribution and warehousing. Many local breweries, brewpub, micro or nanobreweries include a tasting room, where

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customers can sample the products made on site, retail space where customers can purchase or bring home products, and sometimes a restaurant is part of the facility.

There could be concerns about increase in noise and odor, vehicle activity, reduced parking availability, and any resulting impacts on the surrounding neighborhood and community. Site location and design should be analyzed.

I. Section 11.A of the Whitestown UDO shall be amended to include:

Brewery

Establishment that is used for production or beer or malt beverages. This may also include an on-site tasting room and entertainment. Classifications under a brewery may include microbreweries and brewpubs that are defined as production and sale of produced alcohol to the general public, and may operate in conjunction with a restaurant. Permitted uses of a brewery can be determined by WPC or by staff.

II. Section 2.4.B—the R3 (Medium Density Single-Family and Two-Family Residential) district; of the Whitestown UDO shall be amended to include brewery as a Special Exception Use.

III. Section 2.9.B—the GB (General Business) district; of the Whitestown UDO shall be amended to include brewery as a Special Exception Use.

IV. Section 2.11.B—the I1 (Light Industry) district; of the Whitestown UDO shall be amended to include brewery as a Permitted Conditional Use.

V. Section 2.12.B—the I2 (General Industry) district; of the Whitestown UDO shall be amended to include brewery as a Permitted Use.

VI. Section 4.2.A- Lighting shall be amended as follows:

In any district, outdoor lighting, where provided, shall be of a design and size that is harmonious with the design of the building, the type of land use, and the type of adjacent land uses. Down-lighting fixtures shall be used. If external spot or flood lighting is used, the light source should be shielded and restrained in such a manner so as not to illuminate or intrude on surrounding properties. Excessive brightness, flashing lights, and brilliant colors are not permitted.