

ORDINANCE NO. 2013-08

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF WHITELAND, INDIANA, AMENDING THE MUNICIPAL CODE BY ADDITION OF A CODE REGARDING TEMPORARY USES

WHEREAS, pursuant to the requirements of Indiana Code 36-7-4-600 et seq., the Town of Whiteland Advisory Plan Commission (the "Plan Commission") has considered a proposal (the "Proposal") to amend the text of the Town of Whiteland Zoning Ordinance to add provisions regulating temporary uses; and

WHEREAS, the Plan Commission held a duly noticed public hearing on the Proposal on May 7 and June 4, 2013; and

WHEREAS, the Plan Commission has certified with a favorable recommendation the Proposal to the Town Council (the "Council") of the Town of Whiteland, Indiana (the "Town"); and

WHEREAS, the amendments herein are consistent with following purposes, as required under I.C. 36-7-4-601(c):

- a. "Securing adequate light, air, convenience of access, and safety from fire, flood, and other danger;
- b. Lessening or avoiding congestion in public ways;
- c. Promoting the public health, safety, comfort, morals, convenience, and general welfare; and
- d. Otherwise accomplishing the purposes of I.C. 36-7-4"; and

WHEREAS, as required under I.C. 36-7-4-603, in preparing and considering the Proposal, the Plan Commission and the Council have paid reasonable regard to:

- a. "The comprehensive plan;
- b. Current conditions and the character of current structures and uses in each district;
- c. The most desirable use for which the land in each district is adapted;
- d. The conservation of property values throughout the jurisdiction; and
- e. Responsible development and growth"; and

WHEREAS, the Council desires to encourage appropriate and compatible land development to enhance property values and to promote the health, safety, and general welfare of the Town; and

WHEREAS, the Council has given notice under I.C. 5-14-1.5-5 (the Open Door Law) of its intention to consider the amendments to the Whiteland Zoning Ordinance; and

WHEREAS, the Council desires to adopt and incorporate the amendments recommended by the Plan Commission into the Municipal Code.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Whiteland, Indiana that:

SECTION 1. The Municipal Code, Section 10.97, shall be amended to add the following fees:

"Temporary use permits

Transient retail sales	\$100
Temporary fireworks sales	\$100
Christmas/holiday tree sales	\$70
Farmers' markets	\$70
Auctions	\$35
Real estate offices and model homes	\$150
Other temporary uses	\$100
Temporary use permit renewals	75% of the original permit fee"

SECTION 2. The Municipal Code, Section 150.36(E), shall be amended by removing the following text:

“Temporary permits. The Board of Zoning Appeals may authorize, by written permit, in a residential district for a period of not more than one year from the date of such permit, a temporary building for commercial or industrial use incidental to the residential construction and development of said district.”

and replacing such text with the following:

“Temporary permits. Temporary permits for certain uses may be authorized by the Director of Planning and Zoning and/or the Building Commissioner in accordance with §156.250. “

SECTION 3. The Municipal Code, Section 156.003, shall be amended to add the following definitions:

FARM PRODUCER. A person or entity that raises or produces farm products on land that the person or entity farms and owns, rents, or leases.

FARM PRODUCTS. Fruits, vegetables, grains, straw/hay, mushrooms, herbs, nuts, shell eggs, honey or other bee products, flowers, nursery stock, livestock food products (including meat, milk, cheese and other dairy products), and fish.

FARMERS' MARKET. An outdoor market open to the public, operated by a governmental agency, a nonprofit corporation, or one or more farm producers, at which at least 75 percent of the products sold are farm products or value-added farm products, and at least 75 percent of the vendors regularly participating during the market's hours of operation are farm producers, or family members or employees of farm producers.

SEASONAL RETAIL SALES. Outdoor sales of merchandise or materials of a seasonal nature, conducted by an established business on its own premises, or by a vendor contracted with an established business on its own premises. Examples may include sales of mulch, pumpkins, lawn equipment or furniture, snow blowers, and the like.

STORAGE CONTAINER. A shipping container, semi-truck trailer, “POD”, or similar portable container or vehicle used for storage. A shipping container converted to a permanent non-storage use is not included in this definition.

TEMPORARY USE. A use of land that is designed, operated, and occupies a site for a limited or finite duration, typically less than twelve months.

TEMPORARY FIREWORKS SALES. Businesses or persons selling fireworks (as defined by I.C. 22-11-14-1) as the majority of their sales for a short-term duration. This applies to all fireworks sales occupying a temporary structure and those occupying a permanent structure with less than a 6-month lease. This does not apply to general retail businesses selling fireworks as a minor component of total sales, wholesalers, or permanently established fireworks retailers that have public business hours throughout the year.

TRANSIENT RETAIL SALES. Short-term sales of merchandise, food products, or services, by a person or business that is not previously established on the premises on which the sale occurs.

VALUE-ADDED FARM PRODUCT. Any product processed by a farm producer from a farm product, such as baked goods, jams, and jellies.”

Section 4. A new Section 156.250 shall be added to Chapter 156 of the Municipal Code, to read as follows:

"SECTION 156.250 Temporary Uses

(A) Permits Required

Subject to the general and specific regulations set forth herein, and all other applicable regulations of the district in which a temporary use is located, the temporary uses set forth below may be allowed, provided that a temporary use permit is first obtained where required. In granting a permit for a temporary use, the Director of Planning and Zoning and/or the Building Commissioner may impose any reasonable conditions or restrictions that it finds necessary to protect the public safety, general welfare, and the spirit and intent of this section. A permit fee, in the amount specified in the Official Fee Schedule (§10.97), shall be required to be paid prior to permit issuance.

(B) Duration

- (1) Unless specifically provided otherwise in this section, a temporary use shall be permitted for a period not to exceed one (1) year. Unless provided otherwise in this section, a temporary use permit may be renewed for additional periods of up to one (1) year each by the Planning and Zoning Department upon showing of good cause.
- (2) All structures, buildings, debris, and any other materials or improvements associated with a temporary use shall be immediately removed from the site upon completion or cessation of the temporary use or the expiration of the temporary use permit.

(C) General Regulations

- (1) No temporary use shall be permitted in a district if it would have a significant negative impact, including aesthetic impact, on any adjacent property or on the area, as a whole, in which it is located.
- (2) No temporary use shall be permitted that causes or threatens to cause an on-site or off-site threat to public safety.
- (3) No temporary use shall be permitted if the additional vehicular traffic reasonably expected to be generated by such temporary use would have undue detrimental effects on surrounding streets and uses. Unless otherwise provided, no temporary use shall be located within the public right-of-way.
- (4) Temporary signs shall be permitted only in accordance with the provisions of Chapter 153.
- (5) Except as expressly provided otherwise, every temporary use shall comply with the use regulations applicable in the district in which such temporary use is located.
- (6) Every temporary use shall comply with any such other conditions as may be imposed by the Director of Planning and Zoning and/or Building Commissioner designed to be reasonably necessary to achieve the purposes of this Ordinance or to protect the public health, safety, and general welfare.
- (7) Temporary uses regulated by this section that were in operation or existence on a premises on 8-12-13 [the date of passage of this ordinance] (the "Temporary Use Grandfather Date") shall be permitted to continue without a permit for a period, starting on the Temporary Use Grandfather Date", not to exceed the duration otherwise permitted for such temporary use under this section.

(D) Temporary Uses without Permit Required

The temporary uses enumerated in this subsection may be allowed without the requirement of a temporary use permit being obtained, if such uses comply with the regulations of this subsection.

- (1) Garage Sales (also known as yard sales, moving sales, etc.) may be permitted in any residential district or on a residentially-used property, subject to the following conditions:
 - (a) Sale merchandise shall be limited to the personal possessions of the owner or occupant of the dwelling unit at which the sale is being conducted. However, one (1) or more owners may

- conduct a combined garage sale on one (1) of the premises owned by a participant, provided that all other conditions are complied with.
- (b) Such use shall be limited to a period not to exceed five (5) consecutive days.
 - (c) No more than four (4) such sales shall be conducted from the same residence in any calendar year.
 - (d) Hours of operation shall be limited to dawn to dusk.
- (2) Private personal property sales may be permitted in any residential district or on a residentially-used property, subject to the following conditions:
- (a) Sale merchandise shall be limited to the personal possessions of the owner or occupant of the dwelling unit at which the sale is being conducted.
 - (b) No more than three merchandise items shall be offered for sale at any one time.
 - (c) The duration of sales shall be limited to no more than thirty (30) consecutive days in any 180 day period.
- (3) Seasonal retail sales may be permitted in any commercial district, or on a commercially-used property, subject to the following conditions:
- (a) An established non-temporary use business shall be in operation on the premises on which the sale/display is located, and such sale/display shall be conducted only by or on behalf of said business.
 - (b) If located on a parking lot, adequate traffic flow and safe traffic patterns must be maintained.
 - (c) Sales/displays shall not infringe upon or otherwise interfere with public rights-of-way.
 - (d) The duration of such use shall be longer than two (2) weeks and not longer than six (6) months.
- (4) Contractors' offices, equipment sheds, or construction trailers may be permitted in any district subject to the following conditions:
- (a) The use shall be accessory to an active construction project and shall be located on the same lot or within the same section of the subdivision under construction.
 - (b) Such use shall be limited to a period not to exceed the duration of the active construction phase of such project.
- (5) Tents may be erected in conjunction with any permitted temporary, permanent, or accessory use, subject to the following conditions:
- (a) The tent shall be erected not more than two (2) days before the start of the permitted temporary use, and shall be removed not more than two (2) days after the conclusion of the permitted temporary use.
 - (b) A building permit may be required to be obtained.
- (6) Portable classrooms may be placed on any public school property, subject to obtaining any required building permit(s).
- (7) Charity collection points (e.g. collection kettles, donation bins, etc.) may be allowed, subject to the following conditions:
- (a) The use shall be limited to a period not to exceed sixty (60) consecutive days in any 180-day period.
 - (b) The location of the use shall not interfere with pedestrian or vehicular movement on the premises.
- (8) Storage containers may be permitted in any district for a period not to exceed fourteen (14) days.
- (9) Charity carwashes may be allowed, provided that the use is sponsored by, or directly benefits, a non-profit organization located within Johnson County, and that the use does not adversely affect public right-of-way.
- (10) Other similar temporary uses may be permitted in any district provided that in the opinion of the Director of Planning and Zoning or the Building Commissioner the use is consistent with the purpose and intent of this section and for the district in which it is proposed to be located.

(E) Temporary Uses with Permit Required

The temporary uses listed in this subsection may be allowed upon issuance of a temporary use permit from the Planning and Zoning Department.

- (1) Transient retail sales may be permitted in any commercial district, subject to the following conditions:
 - (a) Written permission of the property owner shall be required.
 - (b) A valid Registered Retail Merchants Certificate for the business conducting the sale shall be required.
 - (c) No part of such operation shall be less than 100 feet from the edge of pavement of any public street
 - (d) The duration of such use shall be limited to three (3) consecutive days in any 180-day period.
 - (e) No solicitation shall occur, except in accordance with Chapter 112.
- (2) Temporary fireworks sales may be permitted in any C-2 district, subject to the following conditions:
 - (a) Such use shall be limited to a period not to exceed sixty (60) days.
 - (b) Such use shall provide adequate customer parking, traffic access, and the absence of an adverse impact on other properties.
 - (c) No more than one (1) temporary use permit for the sale of fireworks shall be issued per site within any calendar year.
- (3) Christmas/holiday tree sales may be permitted in any non-residential district or on the property of any public school or nonprofit organization, subject to the following conditions:
 - (a) Such use shall be limited to a period not to exceed forty-five (45) days.
 - (b) Such use shall conclude no later than December 31st of the permit year.
 - (c) Such use shall provide adequate customer parking, traffic access, and the absence of an adverse impact on other properties.
 - (d) Not more than one temporary trailer or structure shall be permitted to be located as part of the use.
 - (e) Lighting, if any, shall not adversely affect adjacent properties or rights-of-way.
- (4) Farmers' markets may be permitted in any non-residential district, subject to the following conditions:
 - (a) Restrictions on duration and hours shall be imposed based on the location of the market and its effect on surrounding streets and properties.
 - (b) Markets may recur throughout the year under one permit.
 - (c) All farmers' markets shall have a Market Manager authorized to direct the operations of all vendors participating in the market on the site of the market during all hours of operation.
 - (d) Public property or right-of-way may be utilized for such use, dependent on obtaining a right-of-way permit and/or other required approvals.
- (5) Auctions and estate sales may be permitted in any district, subject to the following conditions:
 - (a) A plan for adequate parking and traffic control shall be required. On-street parking may be allowed with approval by the Town Marshal.
 - (b) Restrictions on hours shall be imposed based on the location of the auction and its effect on surrounding streets and properties.
 - (c) Notification of surrounding property owners prior to the date of the event may be required as a condition of the temporary use permit.
 - (d) The duration of the use shall not exceed three consecutive days.
- (6) Real Estate offices (e.g. model homes, sales trailers, model units) may be permitted in any district, subject to the following conditions:
 - (a) The use shall be accessory to an active new development and shall not be commenced prior to final plat approval by the Plan Commission. No building permits for permanent structures shall be issued prior to final plat recordation.
 - (b) Such use shall not also be used as a dwelling unit.

- (c) Such use shall be limited to the duration of the active selling or leasing of lots, units, or space in such development or phase of a subdivision, and to activities related to the development in which such office is located.
- (d) No such use shall be used as a general office for business beyond the active selling or leasing of lots, units, or space.
- (e) An Improvement Location Permit/Building Permit may also be required.
- (7) Storage containers may be allowed with a permit in any non-residential district for a period exceeding fourteen (14) days, subject to the following conditions:
 - (a) No containers shall be placed within the front setback.
 - (b) No materials shall be stored on top of any container.
 - (c) Permits for storage containers located in non-industrial districts shall be limited to one (1) non-renewable permit not to exceed one (1) year in duration. No permit shall be required for storage containers located in industrial districts.
 - (d) The storage or placement of empty containers for lease or sale on a property that permits such use is not regulated as a temporary use.
- (8) Concerts
- (9) Fairs and festivals
- (10) Circuses and carnivals
- (11) Temporary uses listed in Subsection D that do not comply with the regulations of that subsection, with conditions to be imposed by the Director of Planning and Zoning or the Building Commissioner to ensure that the purpose and intent of this section are maintained.
- (12) Other similar temporary uses may be permitted in any district provided that in the opinion of the Director of Planning and Zoning or the Building Commissioner the use is consistent with the purpose and intent of this section and for the district in which it is proposed to be located.

(F) Prohibited Temporary Uses

The following temporary uses are prohibited.

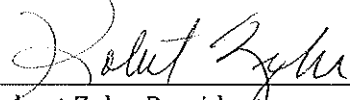
- (1) Temporary outdoor gun, rifle, or firearm shooting ranges
- (2) Sexually-oriented businesses
- (3) Sales or displays of materials that are of obscene, pornographic, or immoral character”

Section 5. This ordinance shall be in full force and effect upon its final adoption.


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ADOPTED this 13th day of August, 2013.

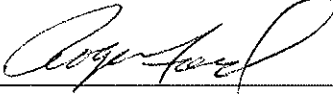
TOWN COUNCIL OF THE TOWN OF
WHITELAND, INDIANA



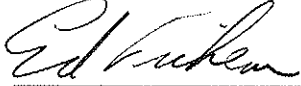
Robert Zehr, President



Kent Beeson, Vice-President



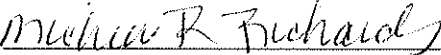
Roger Ford, Member



Ed Tichenor, Member

Chris Hadley, Member

ATTEST:



Michelle Richards, Clerk-Treasurer