

NOTICE OF ADOPTION OF WHITELAND ORDINANCE

Property owners and interested parties are hereby notified that the following ordinance, Whiteland Town Council Ordinance 2023-02, was adopted by the Whiteland Town Council on July 11, 2023, and confirmed by the Town Council on August 8, 2023. [The official signed ordinance identified the additions to the Town Code provisions in bold-black and bold-blue and underline, and deleted provisions in red strikethrough.]

WHITELAND TOWN COUNCIL ORDINANCE NO. 2023-02

AN ORDINANCE PROVIDING FOR THE KEEPING OF CHICKENS ON CERTAIN RESIDENTIAL PROPERTY

WHEREAS, the Whiteland Advisory Plan Commission (“Commission”) conducted a public hearing on the proposed Zoning Code Text Amendment contained herein;

WHEREAS, the Commission, after paying reasonable regard to 1) the Whiteland Comprehensive Plan, 2) the current conditions and the character of the current structures and uses in each district, 3) the most desirable use for which the land in each district is adapted, 4) the conservation of property values throughout the jurisdiction, and 5) responsible development and growth, has made an unfavorable recommendation by a vote of 4 for and 0 against, regarding the proposed change to the Zoning Code Text contained herein, and has certified the same to the Whiteland Town Council (“Council”);

WHEREAS, the Council has considered the recommendation of the Commission and paid reasonable regard to items 1 thru 5 referred to above;

WHEREAS, current Section 91.02 of the Whiteland Town Code prohibits the keeping of chickens within 200 feet of the dwelling house of any person other than the keeper or owner of the chickens;

WHEREAS, the Council has determined to allow the keeping of chickens on certain residential property of the Town of Whiteland under certain conditions and limitations;

WHEREAS, the modifications herein are consistent with the 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;

WHEREAS, the Council finds it is in the best interest of Town to revise the provisions of the Zoning Code Text concerning the keeping of chickens on residential property as provided in

this ordinance; and

WHEREAS, the Council has given notice under I.C. 5-14-1.5-5 (the Open Door Law) of its intention to consider this zoning ordinance.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WHITELAND, INDIANA, AS FOLLOWS:

Section 1. The text of the Whiteland Town Code is hereby amended to revise Section 91.02(A) to read as follows:

§ 91.02 KEEPING ANIMALS, FOWL OR BEES.

(A) It is a nuisance and shall be unlawful for any person to keep poultry or pigeons, or maintain any place where poultry or pigeons are kept, within 200 feet of the dwelling house of any person other than the keeper or owner of the poultry or pigeons. This section does not apply to duly licensed poultry dealers under and pursuant to the laws of the state **and does not apply to Backyard Chickens permitted under a Backyard Chickens Permit issued under the Whiteland Zoning Code.**

Section 2. The text of the Whiteland Town Code is hereby amended to revise Section 91.09 to read as follow:

§ 91.09 NUMBER OF ANIMALS.

(A) The total number of animals permitted to be kept on any property shall be three, **excluding Backyard Chickens permitted under a Backyard Chickens Permit issued under the Whiteland Zoning Code.**

(B) Any property zoned by Chapter 156 of the Whiteland Municipal Code (the Zoning Ordinance) as "Agricultural District" shall not be subject to the maximum number of animals set forth in division (A) above.

Section 3. The text of the Whiteland Zoning Code is hereby amended to add Section 156.181 to read as follows:

§ 156.181 Backyard Chickens

(A) **This section provides the conditions and limitations for the keeping of chickens on residentially zoned properties of the Town of Whiteland.**

(B) **Definitions. Terms used within this Section and not defined below shall have the meanings provided within Section 156.003.**

(1) **“Chicken” means the common domestic chicken fowl (Gallus gallus domesticus) or its young.**

(2) **“Chicken run” means an outdoor enclosed or fenced area where chickens feed or exercise.**

(3) **“Coop” means a cage or roofed enclosure in which chickens are kept.**

(4) “Hen” means a female adult chicken.

(5) “Rooster” means a male adult chicken.

(6) “Backyard Chicken” means a chicken allowed to be on residentially zoned properties of the Town of Whiteland in accordance with this section.

(C) The keeping and raising of chickens shall be allowed on properties zoned for and used for a single-family or two-family dwelling (this is not intended for multi-family dwellings, i.e., apartments), provided that written consent from the property owner is required for any such properties that are a rental dwelling, subject to all of the following conditions and limitations:

(1) The resident of the property has applied for and been issued a Backyard Chickens Permit in accordance with this section.

(2) The maximum number of adult hens allowed shall be six (6).

(3) Roosters are prohibited.

(4) Hens are allowed only within a coop, pen, or chicken run within in a fully fenced enclosure within the rear yard, except when being removed to be transported to, or returned from, a location off of the property, or when being temporarily confined in a garage or indoor space during periods of extreme cold or brooding. The fence must be at least four (4) feet in height.

(5) A coop shall not exceed 120 square feet in area or 10 feet in height, and shall comply with the requirements for accessory buildings.

(6) There shall be a minimum six square feet of run space per hen.

(7) A chicken coop shall be set back at least three feet from any building on the subject property and 25 feet from any residence on a neighboring property.

(8) Chicken feed must be kept secure from pests.

(9) All animal byproducts and waste must be collected and removed or composted on a regular basis, allowing the storage of one sealed container up to 20-gallon in size. All byproducts, waste, and carcasses must be properly disposed of in accordance with applicable law, including without limitation, the rules and regulations of the Indiana Board of Animal Health. Neither the waste, anything contaminated by the waste or carcasses may be disposed of through the Town of Whiteland municipal trash services. If a permit holder fails to properly dispose of any chicken byproducts or chicken waste and or causes any potential contamination of the ground, the permit holder shall be responsible for the costs incurred to clean up and mitigate, as necessary, any

and all such byproducts, waste, or contamination. Violations of this subsection are subject to the fines and penalties provided under Section 156.181(F)(5).

(10) The keeping of chickens shall be for personal use only. No sales of eggs, chickens, chicks, slaughtered chickens or chicks, or fertilizer are allowed.

(11) The caretaker or owner of the chickens must reside on the same lot as the chickens.

(12) Odors from any chickens or chicken waste must not be discernible at any property line.

(13) No slaughtering of chickens shall occur on the property.

(14) Reasonable care of the chickens, in accordance with veterinary standards, must be afforded in all aspects including adequate and proper food, water, and clean living conditions, and proper handling, restraining, sheltering, exercise, grooming, nutrition, parasite control, and waste management. Poor condition or health of a chicken in the absence of veterinary supervision is prima facie evidence of a violation.

(15) No property owner or resident of property located within 200' of the property has objected to the proposed keeping and raising of chickens on the property showing that the requirements and conditions of this section have not been satisfied or showing that the issuance of a Backyard Chickens Permit would likely result in a nuisance to them or their property.

(16) Compliance with all other generally applicable provisions of the Whiteland Zoning Code and the Town Code.

(17) A person is in violation of this section if the person is a holder of a Backyard Chickens Permit and refuses, upon request by a Town official during reasonable hours, to make his animals, premises, facilities, equipment, and any necessary registrations or permits, available for inspection. Regular inspections may occur to ensure that the property is in compliance with this section. The Town may hire a third-party contractor to assist with inspections and/or other non-compliance matters. Addressing non-compliance matters shall be at the permit holder's expense.

(18) This section shall not supersede, replace, or have control over any recorded deed restrictions, covenants, homeowners association rules, or other applicable restrictions that prohibit the keeping of chickens on such property.

(19) Permittees must operate their property in a manner so as not to pose a threat to public health. Permittees shall isolate chickens that are sick or diseased so as to not endanger the health and well-being of other animals and humans. When necessary for the protection of public health and safety, the Town Manager and/or any public health official may require that a specified animal be kept confined in a secured enclosure. This provision is subordinate to any local, state, or federal code governing the treatment of chickens in the

event of a threat to human health. For more information, please refer to the Indiana State Board of Animal Health.

(20) Applicants must complete the Indiana Premises Identification Registration through the Indiana Board of Animal Health and submit proof of registration.

(21) If a permit holder moves and leaves any chicken byproducts or chicken waste and or any potential contamination of the ground, the permit holder shall be responsible for the costs incurred to clean up and mitigate, as necessary, any and all such byproducts, waste, or contamination.

(D) Chickens that are not kept as provided under this Section shall be deemed a nuisance under Section 91.02 of the Whiteland Town Code.

(E) Backyard Chickens Permit. A person desiring to keep chickens pursuant to this section must first apply for and be issued a Backyard Chickens Permit from the Planning and Zoning Department (“Department”).

(1) In addition to paying the applicable non-refundable application fee at the time of filing, the applicant shall also:

- (a) Submit a complete permit application on a form provided by the Department;
- (b) Provide floorplans and side elevations for the proposed coop, or if a commercially available coop is to be used, a picture of the coop together with the manufacturer, model, and size of the coop;
- (c) Provide a site drawing showing the proposed location for the coop and chicken run, along with all property lines, building lines, setbacks, fences, and other structures located or proposed to be located on the property;
- (d) Provide written, notarized authorization from the property owner allowing backyard chickens if the applicant is a person other than the owner of the property on which the backyard chickens will be kept;
- (e) Place a notice of the application on the property, in accordance with Rules of the Procedure of the Whiteland Board of Zoning Appeals, which notice shall remain on-site until final action on the application has been taken;
- (f) Provide notice, at the applicant’s expense and in the form required by the Department, to all adjoining legal landowners of property within two (2) property depths, or 660 -feet of the subject property, in accordance with the Rules of Procedure of the Whiteland Board of Zoning Appeals. Such notice shall be made by certified mail, by certificate of mailing, or by personal service. Applicant shall provide the Department the certified mail receipts or the certificate of mailing and any unopened returned notices, or the dated signatures of

property owners indicating personal receipt of the notice, accompanied by an affidavit signed by the applicant verifying that all persons entitled to receive notice pursuant to this section have been properly notified and that notice of the application has been placed on-site. No Backyard Chicken Permit shall be issued until at least fifteen (15) days after the applicant has provided the Department with the required proof of the notice being delivered and posted at the property. And,

(g) Complete the Indiana Premises Identification Registration through the Indiana Board of Animal Health and submit proof of registration to the Department.

(2) If all requirements and conditions of this section have been satisfied and no owners or residents of nearby properties entitled to notice have submitted to the Department a written objection to the proposed keeping of chickens on the applicant's property, the Backyard Chickens Permit shall be issued by the Department.

(3) Prior to the issuance of a backyard chickens permit, a site inspection during reasonable hours may be conducted by a representative of the Department to verify compliance with the requirements of this section.

(4) All Backyard Chickens Permits issued under this section shall be nontransferable and valid only for the applicant and location for which it was originally issued. In the event the permit holder no longer resides at the property for which the permit was issued or no backyard chickens are on the property for a continuous period of thirty (30) days, the permit terminates without refund; otherwise, a Backyard Chickens Permit has an indefinite duration, subject to revocation as provided in this section.

(5) The Department may revoke a Backyard Chickens Permit issued under this section or refuse to issue a permit if the permittee or applicant fails to meet the conditions and limitations of this section, refuses to permit inspections of the property, or violates any provision of this section.

(6) Revocations, denials, and appeals of actions or inactions of the Department under this section shall be handled in accordance with section (F) of this section.

(F) Permit revocation, denial, and appeal.

(1) The Department may issue a notice of revocation of any permit or deny an application for a permit under this section without prior warning, notice, or hearing if the permittee or applicant fails to meet the conditions and limitations of this section, refuses to make the property or chickens in its possession available for an inspection, seriously or repeatedly violates this section in a way that threatens the health or well-being of the permittee or applicant, the permittee's or applicant's neighbors, or animals in their care, fails to comply with any condition of the permit, or otherwise violates this

section in any other way, if the Department gives the permittee or applicant notice that:

- (a) States the reason(s) for the revocation or denial;
- (b) States that the permittee or applicant may appeal the decision by submitting a timely written appeal to the Department; and
- (c) Provides the name and the address of the Department official to whom an appeal may be submitted.

(2) An appeal of a revocation or denial must be made in writing within fifteen (15) days of the issuance of the notice of revocation or denial of a permit to the permittee or applicant. If no appeal request is received within the fifteen (15) day period, the revocation or denial of the permit becomes final. In the event of an appeal by an permittee or applicant, the permittee or applicant shall simultaneously provide notice of the appeal to all owners residents of adjacent properties entitled to notice of the original application, and to any residents who have submitted to the Department a written objection to the proposed keeping of chickens on the applicant's property, in accordance with the application notice requirements, and the applicant shall provide the Department the certified mail receipts or the certificate of mailing and any unopened returned notices, or the dated signatures of property owners or residents, as applicable, indicating personal receipt of the notice, accompanied by an affidavit signed by the applicant verifying that all persons entitled to receive notice pursuant to this section have been properly notified. No appeal hearing shall be held until at least fifteen (15) days after the applicant has provided the Department with the required proof of the notice being delivered.

(3) Upon receiving an appeal, and the notice affidavit if applicable, the Department shall hold a hearing at a reasonable time and place designated by the Department between fifteen (15) days and thirty (30) days after the later of the filing of the appeal and the notice affidavit with the Department; and the Department shall give reasonable notice of the time and place of the hearing to all owners and residents of adjacent properties entitled to notice of the filing of the appeal. Upon completion of the hearing, the director of the Department shall make a ruling on the appeal. The director's decision on the appeal may be appealed to the Whiteland Board of Zoning Appeals (BZA) in accordance with the BZA's Rules of Procedure, provided the appeal to the BZA is filed with the Department within fifteen (15) days of the issuance of the director's decision to the permittee or applicant, and any other interested parties.

(4) The permittee or applicant may reapply for a new permit under this section at any time.

(5) The issuance of a revocation of a Backyard Chickens Permit shall be a remedy in addition to, and not in lieu of, any penalty authorized by the Town Code, and shall not limit any other rights of the Town to pursue other enforcement actions or remedies to address any violation of the provisions of

this section or the Town Code. Whoever violates any provision of this section for which another penalty is not provided shall be fined no less than \$100 for the first offense, \$250 for the second offense, and \$500 for each offense thereafter. In addition, the Town of Whiteland may refuse to grant or renew a permit and may revoke a Backyard Chickens Permit if the applicant is unable to maintain his or her chickens so as to not create a nuisance as evidenced by three substantiated violations of the terms of this section within a period of 12 consecutive months.

Section 4. The text of the Whiteland Zoning Code is hereby amended to revise Section 156.050, concerning uses permitted within the R-1 Single-Family Residential District, to read as follows:

R-1 SINGLE-FAMILY RESIDENTIAL DISTRICT

§ 156.050 USES PERMITTED.

No building or premises shall be used and no building shall be erected, reconstructed or structurally altered which is arranged, intended or designed to be used for other than the following uses, unless otherwise provided herein:

- (A) Single-family dwelling.
- (B) Church or other building for religious worship.
- (C) Public school, elementary or high; and educational institutions having courses of study equivalent to those of public schools.
- (D) Home occupation.
- (E) Public park or public playground and essential accessory buildings thereof.
- (F) Railroad right-of-way but not railroad yards, shops, stations or other buildings.
- (G) Child care homes used as primary residence of the person who operates child care home pursuant to IC 36-7-4-1108.
- (H) Vegetables and flower gardens, orchards and farming but not the raising of livestock and poultry and provided that no sign, display or sales stand is used in conjunction therewith; **provided however, backyard chickens may be kept in accordance with the provisions of Section 156.181 of the Whiteland Zoning Code.**
- (I) Church or public building bulletin boards not exceeding 12 square feet in area.
- (J) Sign of a temporary character, not exceeding six square feet in area, pertaining to the lease, hire or sale of a building or premises, which sign shall be removed as soon as the building or premises has been leased, hired or sold.

Section 5. The text of the Whiteland Zoning Code is hereby amended to revise Section 156.095, concerning uses permitted within the Apartment District, to read as follows:

APARTMENT DISTRICT

§ 156.095 USES PERMITTED.

(A) Uses permitted and specified for use for the R-1 Single-Family and R-3 Multi-Family Residential Districts, **excluding backyard chickens regulated under Section 156.181.**

- (B) Additional uses:
 - (1) Apartment for more than two families.
 - (2) Group houses.

- (3) Lodging houses.
- (4) Boarding houses.
- (5) Hotel in which business may be conducted for the sole convenience of the occupants of the building and provided there shall be no entrance to such place of business except from the inside of the building and that no display of stock of goods for sale shall be so arranged that it can be viewed from the outside of the building.
- (6) Tourist home.
- (7) Private clubs and lodges except those the chief activity of which is a service customarily carried on as a business.
- (8) Spires, churches, steeples, chimneys, cooling towers, elevator bulkheads, fire towers, monuments, penthouses, stacks, tanks, stage towers, scenery lofts, water towers, transmission towers, farm buildings or necessary mechanical appurtenances are permitted in this district.

Section 6. The provisions of all other ordinances or resolutions in conflict with the provisions of this ordinance are of no further force or effect.

Section 7. If any part of this ordinance is held to be invalid, such part will be deemed severable and its validity shall have no effect upon the remaining provisions of this ordinance.

Section 8. The provisions set forth in this ordinance shall become and remain in full force and effect (until their repeal by ordinance) on the date of adoption of this ordinance as evidenced by the signature of the executive as prescribed by Indiana Code 36-5-2-10.

[Remainder of page intentionally left blank.]

DULY PASSED AND FINALLY ADOPTED on the 11 day of July, 2023, by a vote of 3 in favor and 2 against.

TOWN OF WHITELAND, INDIANA, TOWN COUNCIL

Signing Affirmative: Joseph Sayler, President; Brad Goedecker; Laura Fleury

Signing Opposed: Richard Hill, Vice President: David Hawkins

Attest: Debra L. Hendrickson, Clerk-Treasurer

Confirmation of Ordinance 2023-02

The Whiteland Advisory Plan Commission on August 1, 2023, acted to disapprove Ordinance 2023-02, and on August 8, 2023, the Whiteland Town Council considered such Plan Commission action, and hereby confirms its adoption of Ordinance 2023-02 this 8th day of August, 2023, by a vote of 3 in favor and 2 against.

TOWN OF WHITELAND, INDIANA, TOWN COUNCIL

Signing Affirmative: Joseph Sayler, President; Brad Goedecker; Laura Fleury

Signing Opposed: Richard Hill, Vice President: David Hawkins

Attest: Debra L. Hendrickson, Clerk-Treasurer