

Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE ENROLLED ACT No. 174

AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 36-7-4-605 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 605. (a) ADVISORY–AREA. A proposed zoning ordinance shall be certified to each participating legislative body by the plan commission as follows:

- (1) If the proposal is to adopt an initial zoning ordinance (or to adopt a replacement zoning ordinance after repealing the entire zoning ordinance, including amendments and zone maps) under section 606 of this chapter, it may be certified only if it receives a favorable recommendation from the commission.
- (2) If the proposal is to amend or partially repeal the text (not zone maps) of the ordinance under section 607 of this chapter, it may be certified with a favorable recommendation, an unfavorable recommendation, or no recommendation from the commission.
- (3) If the proposal is to change the zone maps incorporated by reference into the ordinance under section 608 of this chapter, it may be certified with a favorable recommendation, an unfavorable recommendation, or no recommendation from the commission.

(b) METRO. **Except as provided in subsection (c)**, a proposal shall

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be certified to the legislative body by the metropolitan development commission only if it receives a favorable recommendation from the commission.

(c) METRO. A proposal to change the zone maps incorporated by reference into the ordinance under section 608 of this chapter shall be certified to the legislative body by the metropolitan development commission regardless of whether the proposal receives a favorable recommendation, an unfavorable recommendation, or no recommendation from the commission.

~~(c)~~ **(d)** The legislative body shall consider the recommendation (if any) of the commission before acting on the proposal under section 606, 607, or 608 of this chapter.

SECTION 2. IC 36-7-4-608 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 608. (a) This section applies to a proposal, as described in section 602(c) of this chapter, to change the zone maps incorporated by reference into the zoning ordinance.

(b) If the proposal is not initiated by the plan commission, it must be referred to the commission for consideration and recommendation before any final action is taken by the legislative body. On receiving or initiating the proposal, the commission shall, within sixty (60) days, hold a public hearing in accordance with section 604 of this chapter. Within ten (10) business days after the commission determines its recommendation (if any), the commission shall certify the proposal under section 605 of this chapter.

(c) METRO. This subsection applies if the proposal receives a favorable recommendation, **an unfavorable recommendation, or no recommendation** from the plan commission:

(1) At the first regular meeting of the legislative body after the proposal is certified under section 605 of this chapter, the legislative body may, by a majority of those voting, schedule the proposal for a hearing on a date not later than its next regular meeting. **The legislative body member in whose district the parcel of real property under consideration is located may submit a request to the president of the legislative body that the proposal be considered under this subsection.**

(2) If the legislative body fails to schedule the proposal for a hearing under subdivision (1), the ordinance takes effect as if it had been adopted at the first regular meeting of the legislative body after the proposal is certified under section 605 of this chapter.

(3) For purposes of this subdivision, the final action date for a



proposal is the date thirty (30) days after the date that the proposal is certified under section 605 of this chapter, or the date of the second regular meeting after the proposal is certified under section 605 of this chapter, whichever is later. If the legislative body schedules the proposal for a hearing under subdivision (1) but fails to act on it by the final action date, the ordinance takes effect as if it had been adopted (as certified) on the final action date. However, the period of time from certification under section 605 of this chapter to the final action date may be extended by the legislative body, with the consent of the initiating plan commission or the petitioning property owners. If the legislative body fails to act on the proposal by the final action date (as extended), the ordinance takes effect as if it had been adopted (as certified) on that extended final action date.

(4) If the legislative body schedules the proposal for a hearing under subdivision (1), it shall announce the hearing during a meeting and enter the announcement in its memoranda and minutes. The announcement must state:

- (A) the date, time, and place of the hearing;
- (B) a description of the proposed changes in the zone maps;
- (C) that written objections to the proposal filed with the clerk of the legislative body or with the county auditor will be heard;
- and
- (D) that the hearing may be continued from time to time as may be found necessary.

(5) If the legislative body rejects the proposal at a hearing scheduled under subdivision (1), it is defeated.

(d) METRO. The plan commission may adopt a rule to limit further consideration, for up to one (1) year after its defeat, of a proposal that is defeated under subsection (c)(5).

(e) ADVISORY–AREA. The legislative body shall vote on the proposal within ninety (90) days after the plan commission certifies the proposal under section 605 of this chapter.

(f) ADVISORY–AREA. This subsection applies if the proposal receives a favorable recommendation from the plan commission:

(1) At the first regular meeting of the legislative body after the proposal is certified under section 605 of this chapter (or at any subsequent meeting within the ninety (90) day period), the legislative body may adopt or reject the proposal. The legislative body shall give notice under IC 5-14-1.5-5 of its intention to consider the proposal at that meeting.

(2) If the legislative body adopts (as certified) the proposal, it



takes effect as other ordinances of the legislative body.

(3) If the legislative body rejects the proposal, it is defeated.

(4) If the legislative body fails to act on the proposal within ninety (90) days after certification, the ordinance takes effect as if it had been adopted (as certified) ninety (90) days after certification.

(g) **ADVISORY–AREA.** This subsection applies if the proposal receives either an unfavorable recommendation or no recommendation from the plan commission:

(1) At the first regular meeting of the legislative body after the proposal is certified under section 605 of this chapter (or at any subsequent meeting within the ninety (90) day period), the legislative body may adopt or reject the proposal. The legislative body shall give notice under IC 5-14-1.5-5 of its intention to consider the proposal at that meeting.

(2) If the legislative body adopts (as certified) the proposal, it takes effect as other ordinances of the legislative body.

(3) If the legislative body rejects the proposal, it is defeated.

(4) If the legislative body fails to act on the proposal within ninety (90) days after certification, it is defeated.

(h) **ADVISORY–AREA.** The plan commission may adopt a rule to limit further consideration, for up to one (1) year after its defeat, of a proposal that is defeated under subsection (f)(3), (g)(3), or (g)(4).

SECTION 3. IC 36-7-4-922 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 922. (a) **METRO.** ~~An official designated by the metropolitan development commission~~ **Either of the following** may appeal to the metropolitan development commission ~~any decision the following decisions~~ of a board of zoning appeals:

(1) An official designated by the metropolitan development commission. An official may appeal any decision regarding:

(A) an administrative appeal; or

(B) approving:

(i) a special exception;

(ii) a special or conditional use; or

(iii) a variance from the terms of the zoning ordinance.

(2) A member of the legislative body of the city and county in whose district the parcel of real property under consideration is located. A legislative body member in whose district the parcel of real property under consideration is located may appeal any decision approving, denying, or otherwise concerning a variance of use from the terms of the zoning ordinance that affects only real property located outside the



corporate boundaries of an excluded city.

The official **or the legislative body member** must file in the office of the department of metropolitan development a notice of appeal within five (5) days after the board files a copy of the decision in the office of the board. However, if a representative of the department of metropolitan development **or the legislative body member** appears at the hearing at which the administrative appeal is decided or the special exception, special or conditional use, or variance is approved **or denied**, then the official **or legislative body member** must file the notice of appeal within five (5) days after the board has rendered its decision. The notice must certify that the decision raises a substantial question of zoning policy appropriate for consideration by the commission. The commission shall hear the appeal at its next regular meeting held not less than five (5) days after the notice of appeal is filed.

(b) METRO. In hearing appeals under this section, the metropolitan development commission sits as a board of zoning appeals and shall be treated as if it is a board for purposes of this section. The commission may accept into evidence the written record, if any, of the hearing before the board of zoning appeals, along with other evidence introduced by the staff or interested parties. The commission shall consider the matter de novo, but the decision of the board is considered affirmed unless two-thirds (2/3) of the commission members voting vote to deny the administrative appeal, exception, use, or variance.

(c) METRO. Although persons other than the designated official **or legislative body member** may not appeal a decision of a board of zoning appeals to the metropolitan development commission, they may appear as interested parties in appeals under this section. No public notice need be given of the hearing of an appeal under this section, but the official **or legislative body member** shall promptly mail notice of the subject of the appeal and date and place of the hearing to each adverse party. However, if the record of the board shows that more than three (3) proponents or more than three (3) remonstrators appeared, then the official **or legislative body member** need mail notice only to the first three (3) of each as disclosed by the record.

(d) The metropolitan development commission shall give strong consideration to the first continuance of an appeals hearing held under this section that is filed by a member of the legislative body of the city and county.

SECTION 4. IC 36-7-4-1003, AS AMENDED BY P.L.126-2011, SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1003. (a) Each decision of the legislative body



under section 918.6 of this chapter is subject to judicial review in the same manner as that provided for the appeal of a final decision of the board of zoning appeals under section 1016(a) of this chapter.

(b) METRO. A petition for judicial review must be filed with the court after the expiration of the period within which an official designated by the metropolitan development commission **or a member of the legislative body of the city and county** may file an appeal under section 922 of this chapter but not later than the period provided for timely filing under section 1605 of this chapter. However, if the official **or the member of the legislative body of the city and county** files an appeal, then only the decision of the metropolitan development commission sitting as a board of zoning appeals is subject to judicial review. The official, **or the** department of metropolitan development, **or the member of the legislative body of the city and county** may not seek judicial review of a decision of a board of zoning appeals or the commission sitting as a board of zoning appeals.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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