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2008

ORDINANCE 08-38

**AN ORDINANCE ESTABLISHING AN  
ORDINANCE VIOLATION DEFERRAL PROGRAM  
FOR THE CITY OF WESTFIELD**

**WHEREAS**, the Common Council of the City of Westfield, Indiana (“City”), desires to establish an ordinance violation deferral program (“Deferral Program”) which will (1) provide qualified individuals with an opportunity to voluntarily defer the City’s prosecution of designated ordinance violations, (2) deter additional ordinance violations, (3) expedite City processing of ordinance violations, and (4) enable the City to obtain certain fees for each ordinance violation so deferred; and,

**WHEREAS**, the Indiana Code 34-28-5-1(f) allows the City Attorney of the City of Westfield (“City Attorney”) to establish a Deferral Program to defer the enforcement of certain City ordinance violations in cases where a written deferral agreement is voluntarily entered into between the defendant and the City Attorney, the defendant agrees to pay certain user fees (“Deferral Fees”) in amounts established by the City Attorney pursuant to Indiana Code 33-19-5-2(e), as well as certain other court costs and fees; and,

**WHEREAS**, Indiana Code 34-28-5-1(f) requires an executed deferral agreement to be filed in the court in which the original action is brought, and, upon the defendant’s successful completion of the terms and conditions set forth in said agreement, that the City Attorney petition the court to dismiss the action, with prejudice; and,

**WHEREAS**, in addition to the other court costs and fees collected by the Clerk of the Court, Indiana Code Section 33-19-5-2(e) requires the Clerk of Court to collect the Deferral Fees in lieu of the ordinance violation costs fee for cases proceeding under and pursuant to the Deferral Program; and,

**WHEREAS**, the City desires to use the Deferral Fees collected under and pursuant to the Deferral Program to help defray the cost and expense of operating the Deferral Program, to pay the costs of prosecuting City Ordinance violations, and to help defer the costs of associated with the operation of the Court ; and,

**WHEREAS**, a “User Fee Fund” as provided by statute must be established and used to ,

**NOW, THEREFORE, BE IT ORDAINED  
by the Common Council of the City of Westfield, that:**

**Section 1.** The City of Westfield Ordinance Violation Deferral Program is established. Eligible individuals who have violated qualifying Westfield City ordinance

may voluntarily enter the Deferral Program by written agreement with the City Attorney. The Deferral Program shall provide for the following:

- (a) The defendant shall voluntarily agree to the terms and conditions of the deferral agreement offered by the City Attorney;
- (b) The terms and conditions of the deferral agreement shall be in writing and signed by the City Attorney;
- (c) The defendant shall agree to pay to the Clerk of Court the Deferral Fees established by the City Attorney and approved by the Common Council;
- (d) The defendant shall agree to pay all other applicable court fees and costs to the Clerk of Court;
- (e) The executed deferral agreement shall be filed in the designated Court;
- (f) Upon the defendant's successful compliance with the terms and conditions of the deferral agreement, the City Attorney shall file a motion with the Court to dismiss the pending deferred action; and
- (g) The Court shall dismiss the pending deferred action against the defendant, with prejudice, upon receipt of a motion to dismiss from the City Attorney.

**Section 2.** The City Attorney is hereby given full authority to administer the Deferral Program, and to draft, prepare and execute all documents and forms necessary and desirable for the implementation of the Deferral Program. The City Attorney is also authorized and directed to work with a Court of proper jurisdiction to establish the amount of the Deferral Program user's fee, at a level not to exceed the amounts authorized by law and to submit said fees to the Common Council for approval. The City Attorney shall also establish all eligibility and participation criteria for the Deferral Program, and take any and all other lawful actions necessary to implement this Ordinance and administer the Deferral Program.

**Section 3.** All Deferral Fees from the Deferral program shall be deposited by the Clerk of the Court into the City's Deferral Fund ("Deferral Fund"). The Deferral Fund shall be administered by the fiscal officer of the City, who shall maintain appropriately detailed records of all Deferral Fees deposited into and transferred out of the Deferral Fund.

**Section 4.** The fiscal office of the City shall periodically certify to the Common Council and City Attorney an accounting of the amount of Deferral Fees received by and transferred from the Deferral Fund. The Clerk-Treasurer shall submit claims to the Common Council for the payment of expenses set out herein from the Deferral Fees deposited in the Deferral Fund.

**Section 5.** Notwithstanding any other provision in this Ordinance, in the event the Deferral Program is discontinued by the City, or there are excess funds in the Fund, and after all Deferral Program costs and expenses have been paid in full, the Deferral Fees collected and on deposit in the Deferral Fund shall be used to pay the expenses of the Court, or may be transferred to the City's General Fund.

**Section 6.** There is established a Deferral Fund, (hereinafter referred to as "the Fund") pursuant to Indiana Code Section 33-19-8-3. The Deferral Fund shall be used to

help defray the cost and expense of operating the Deferral Program, to pay the costs of prosecuting City Ordinance violations, and to help defer the costs of operating the Court.

**Section 7.** This Ordinance shall be in full force and effect in accordance with Indiana law, upon the passage of any applicable waiting periods, all as provided by the laws of the State of Indiana. All ordinances or parts thereof that are in conflict herewith are hereby ordered repealed.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

ALL OF WHICH IS ORDAINED THIS 11 DAY OF Aug 2008.

WESTFIELD CITY COUNCIL

Voting For

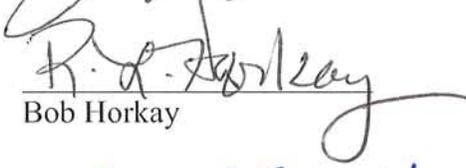
Voting Against

Abstain

  
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Bob Horkay

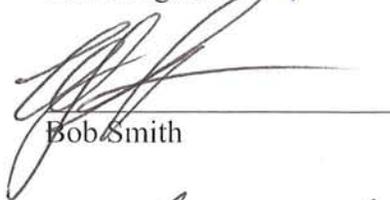
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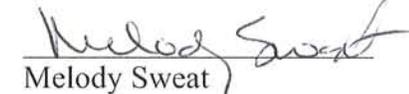
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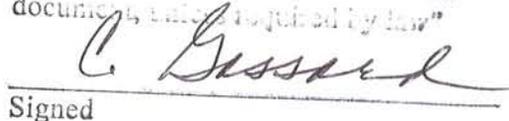
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Melody Sweat

ATTEST:

  
\_\_\_\_\_  
Cindy Gossard, Clerk Treasurer

"I affirm, under the penalties of perjury,  
that I have taken reasonable care to redact  
each Social Security Number in this  
document, as also required by law"

  
\_\_\_\_\_  
Signed

I hereby certify that ORDINANCE 08-38 was delivered to the Mayor of Westfield

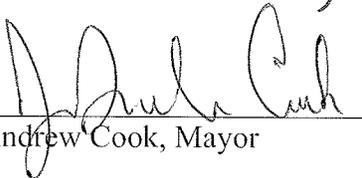
on the 12 day of Aug, 2008, at 11:30 A m.



Cindy Gossard, Clerk-Treasurer

I hereby APPROVE ORDINANCE 08-38

this 12 day of Aug, 2008.



J. Andrew Cook, Mayor

I hereby VETO ORDINANCE 08-38

this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
J. Andrew Cook, Mayor

This document prepared by  
Brian J. Zaiger, Esq.  
KRIEG DEVAULT, LLP  
(317) 238-6266