

First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1418

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 36-4-3-5.2, AS AMENDED BY THE TECHNICAL CORRECTIONS BILL OF THE 2023 GENERAL ASSEMBLY, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5.2. (a) As used in this section, "homeowners association" means a corporation that satisfies all of the following:

- (1) The corporation is exempt from federal income taxation under 26 U.S.C. 528.
- (2) The control and management of the corporation is vested in a board of directors.
- (3) The corporation is organized and operated exclusively for the benefit of two (2) or more persons who each own:
 - (A) a dwelling in fee simple; or
 - (B) a commercial building in fee simple; within the residential development.
- (4) The purpose of the corporation is to:
 - (A) own, maintain, and operate common areas and facilities;
 - (B) administer and enforce covenants and restrictions on property; and
 - (C) collect and distribute assessments on property; located within the residential development.
- (5) The corporation acts in accordance with the articles, bylaws, or other documents governing the corporation to:

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(A) adopt and enforce rules and regulations necessary for the enjoyment of common areas, recreation facilities, and other amenities located within the residential development; and

(B) exercise the corporation's power to:

(i) levy assessments on property within the residential development; and

(ii) collect assessments on property located within the residential development by enforcing the corporation's lien and foreclosure rights.

(b) As used in this section, "residential development" means a parcel of land that is subdivided **or will be subdivided upon collection of the annexation** into:

(1) lots, parcels, tracts, units, or interests that: ~~include:~~

(A) **include** an existing Class 2 structure (as defined in IC 22-12-1-5); or

(B) ~~is~~ **are** designated for the construction of a Class 2 structure;

each of which is encumbered by substantively identical restrictive covenants concerning one (1) or more servient estates located within the boundaries of the original undivided parcel, or other governing document of record;

(2) lots, parcels, tracts, units, or interests that: ~~include:~~

(A) **include** an existing Class 1 structure (as defined in IC 22-12-1-4); or

(B) are designated for the construction of a Class 1 structure; and

(3) a common area.

(c) In addition to annexing territory under ~~sections~~ **section 3, 4, 5, or 5.1** of this chapter, a third class city may annex a residential development and a public highway right-of-way that connects the residential development to the corporate limits of the third class city, if all of the following are satisfied:

(1) The residential development is governed by a homeowners association.

(2) The residential development has at least **any combination of three hundred (300) proposed or existing, or both, single family dwellings: lots within the proposed or existing residential developments.**

(3) The residential development is located in its entirety not more than ~~three (3)~~ **four and five-tenths (4.5)** miles outside the third class city's corporate boundaries.

(4) The residential development dwellings are **or will be upon**



construction connected to the third class city's sewer or water service.

(5) The residential development includes a commercial area containing **or proposed to contain** buildings intended to be used and operated for commercial purposes.

(6) The residential development is adjacent to the public highway right-of-way.

(7) The public highway that connects the residential development to the corporate limits of the city is part of the state highway system (as defined in IC 8-23-1-40).

(8) The annexation territory includes only the public highway right-of-way and the residential development.

(9) The aggregate external boundary of the annexation territory that coincides with the boundary of the municipality is greater than zero (0).

(d) Unless the articles, bylaws, or other governing documents of the homeowners association expressly provide otherwise, the board of directors of the homeowners association may file a petition with the legislative body of the third class city requesting the city to annex all property within the residential development. The annexation may proceed only if the third class city adopts a resolution approving the initiation of the annexation process not more than sixty (60) days after the petition is filed. If the third class city does not adopt a resolution within the sixty (60) day period, the petition is void.

(e) If the legislative body of the third class city adopts a resolution approving initiation of the annexation, the city shall prepare a written preliminary fiscal plan that must be made available to the public at each of the outreach program meetings under section 1.7 of this chapter.

(f) Upon completion of the outreach program meetings and before mailing the notification to landowners under section 2.2 of this chapter, the legislative body of the third class city shall adopt a written fiscal plan by resolution that incorporates any revisions to the preliminary fiscal plan.

(g) The third class city shall hold a public hearing not earlier than thirty (30) days after the date the annexation ordinance is introduced. All interested parties must have the opportunity to testify as to the proposed annexation. Notice of the hearing shall be:

- (1) published in accordance with IC 5-3-1 except that the notice shall be published at least thirty (30) days before the hearing; and
- (2) mailed as set forth in section 2.2 of this chapter.

A third class city may adopt an ordinance not earlier than thirty (30)

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days or not later than sixty (60) days after the legislative body of the third class city has held the public hearing under this subsection.

(h) A landowner may file a remonstrance against the annexation as provided in section 11 of this chapter.

(i) Territory annexed under this section may not be considered a part of the third class city for purposes of annexing additional territory under section 3 or 4 of this chapter. However, territory annexed under this chapter shall be considered a part of the third class city for purposes of annexing additional territory under section 5 or 5.1 of this chapter.

(j) For purposes of an annexation under this section:

(1) section 1.5 of this chapter does not apply; and

(2) the landowner of the public highway right-of-way that is part of the state highway system (as defined in IC 8-23-1-40) is considered to be the state of Indiana.

SECTION 2. An emergency is declared for this act.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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