

**CITY OF WHITEHALL, OHIO**

**Ordinance No. 042 - 2025**

**AN ORDINANCE ENACTED BY THE ELECTORS OF THE CITY OF WHITEHALL PURSUANT TO AN INITIATIVE PETITION TO AMEND THE ZONING CODE TO ESTABLISH THE FAIRWAY BOULEVARD OVERLAY DISTRICT, TO LIMIT FUTURE USES, SUBDIVISION AND INFRASTRUCTURE WITHIN SAID DISTRICT, TO AMEND THE ZONING MAP, TO PROTECT LARGE TREES, TO IMPOSE A MORATORIUM ON DEVELOPMENT PENDING THE OUTCOME OF THE INITIATIVE PETITION, AND TO PROVIDE FOR A PRIVATE RIGHT OF ACTION**

**WHEREAS** the citizens of Whitehall value the unique beauty, environmental integrity, low-density character and spacious residential form of the neighborhood along Fairway Boulevard; and

**WHEREAS** increased subdivision and infill development of large parcels in these areas threatens the environment, stormwater management, tree cover and the overall residential scale of the community; and

**WHEREAS** the purpose of this ordinance is to preserve the unique character and environmental value of these areas by regulating future land use and subdivision activity; and

**WHEREAS**, pursuant to Section 15 of the Charter of the City of Whitehall, an initiative petition has been duly submitted by electors of the City proposing an amendment to the zoning code establishing the Fairway Boulevard Overlay District and changing the zoning of the area described therein, which amendment, among other things, restores certain restrictions under the prior Residential Estate District and is consistent with the spirit and intent of the City's comprehensive plan;

**NOW, THEREFORE, BE IT ORDAINED BY THE PEOPLE OF THE CITY OF WHITEHALL, OHIO:**

**SECTION 1:** The People of the City of Whitehall, by initiative petition pursuant to Section 15 of the Charter of the City of Whitehall (the "City Charter"), do hereby adopt this ordinance to establish the Fairway Boulevard Overlay District and to preserve the unique residential character, environmental features, and quality of life along the Fairway Boulevard corridor. This ordinance is adopted pursuant to the home rule powers of the City of Whitehall and the authority reserved to the people under Article XVIII of the Ohio Constitution and Sections 14 and 15 of the City Charter. It is the intent of the electors that this ordinance be construed broadly to fulfill its purpose and that any ambiguity be resolved in favor of preserving

the low-density character of the Fairway Boulevard Overlay District and upholding the will of the people. The electors find and declare that:

1. The protection of large residential parcels, tree canopy, wildlife and stormwater-sensitive areas within the Fairway Boulevard corridor is essential to the public health, safety, and welfare of the community;
2. Low-density residential development patterns, spacious lots, natural setting, and limited subdivision are defining characteristics of the area and should be safeguarded;
3. Recently, pressure for infill development, increased housing density, and expanded infrastructure within the corridor has threatened to undermine these values and the overall integrity of the neighborhood;
4. The provisions adopted herein are consistent with the City's long-term land use vision and comprehensive planning principles;
5. These zoning amendments are necessary to prevent further erosion of the district's character, protect environmental assets, and ensure that any future development occurs in a manner compatible with the scale and identity of the neighborhood;
6. Increased density and development in the Fairway Boulevard corridor would unduly burden public utilities, stormwater systems, and traffic safety, thereby creating risks to public health and safety. The restrictions set forth in this ordinance are necessary and narrowly tailored to prevent these harms; and
7. It is the express intent of the electors that the restrictions set forth in this ordinance remain in effect unless amended or repealed by a vote of the people, in accordance with the City Charter.

**SECTION 2:** Chapter 1103 (Residential Districts) of the Whitehall Codified Ordinances is hereby amended by adding the following new Section 1103.04 at the end thereof:

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**1103.04 (FBOD) Fairway Boulevard Overlay District.**

(a) **Purpose; Establishment.** This Section 1103.04 was enacted pursuant to an initiative petition under Section 15 of the City Charter in order to amend Part Eleven (Planning and Zoning Code) of the Codified Ordinances of the City of Whitehall to provide for the establishment of the Fairway Boulevard Overlay District and the addition of certain additional zoning restrictions that apply to land, parcels and lots located in the area described in Section 1103.04(b), as amended from time to time (the "Fairway Boulevard Overlay District"). The purpose of the Fairway Boulevard Overlay District is to, among other things, preserve and protect the low-density residential character, environmental integrity, stormwater-sensitive areas, tree canopy, wildlife, natural beauty,

tranquility and quality of life of the Fairway Boulevard corridor by limiting land use intensity, controlling access, and maintaining the existing scale and function of public infrastructure. The Fairway Boulevard Overlay District is hereby established as an additional district under Section 1101.06 (Districts and Map) within the corporate limits of the City of Whitehall. The Fairway Boulevard Overlay District shall be an “overlay” district that is superimposed over any other applicable district or districts, and the requirements set forth in this Section 1103.04 shall be accumulative with those of any underlying district or districts in an additive manner. In the event of any conflict between the requirements of the Fairway Boulevard Overlay District and those of any other district over which it is superimposed, as related to a location situated in more than one district, the most stringent requirement of the applicable districts shall govern.

**(b) Applicability; Zoning Map.** The provisions of this Section 1103.04 shall apply to, and the Fairway Boulevard Overlay District shall include, (i) all land, parcels and lots within the corporate limits of the City of Whitehall that are located between the center line of Fairway Boulevard and the center line of Big Walnut Creek, which are east of the center line of South Hamilton Road, south of the center line of East Broad Street, and north of the center line of East Main Street, and (ii) all parcels and lots that front Fairway Boulevard and/or are contiguous with Fairway Boulevard including, without limitation, the following specifically identified parcels, each of which has an area exceeding one acre (including, without limitation, any and all new parcels that may be created at any time by subdividing any such parcel): Franklin County Parcel Nos. 090-001774-00; 090-001812-00; 090-001819-00; 090-001775-00; 090-001776-00; 090-001010-00; 090-001777-00; 090-001735-00; 090-001778-00; 090-006752-00; 090-001780-00; 090-001781-00; and 090-001782-00. For purposes of this Section 1103.04, a parcel or lot shall be deemed to be “contiguous with Fairway Boulevard” if it borders, abuts, adjoins or shares a boundary of any length, whether direct or through a corner point, with Fairway Boulevard or with another parcel that fronts, abuts, borders or is contiguous with Fairway Boulevard.

Notwithstanding the forgoing provisions of this Section 1103.04(b) to the contrary, this Section 1103.04 shall not apply to, and the Fairway Boulevard Overlay District shall not include, each of the following specifically identified parcels (including, without limitation, any and all new parcels that may be created at any time by subdividing any such parcel), *so long as* such parcel continues not to be part of the Single and Two-Unit Residential District (see Section 1103.02): Franklin County Parcel Nos. 090-000056-00; 090-001568-00; 090-001054-00; 090-000044-00; 090-008226-00; 090-008206-00; 090-002152-00; 090-008727-00; 090-005397-00; 090-005527-00; 090-005526-00; 090-001580-00; 090-005437-00; 090-005519-00; 090-008045-00; and 090-000539-00.

The Fairway Boulevard Overlay District shall be designated on the Zoning Map by the symbol “FBOD”. The Public Service Director shall immediately and ministerially cause the Zoning Map to reflect the Fairway Boulevard Overlay District and the zoning changes set forth in this Section 1103.04; provided, however, that notwithstanding any other provision of Part Eleven (Planning and Zoning Code) to the contrary, the failure or delay of the Service Department to amend the Zoning Map shall not effect in any manner the effective date, legality, validity, enforcement or application of this Section 1103.04. All questions and disputes concerning the exact location of the boundaries of the Fairway Boulevard Overlay District shall be resolved by the Director of Public Service consistent with the provisions of this Section 1103.04 and the guidelines for interpretation set forth in Section 1101.07 of the Codified Ordinances of the City of Whitehall.

**(c) Subdivision, Frontage and Area Restrictions.** Notwithstanding any other provision of Part Eleven (Planning and Zoning Code) to the contrary, no land, parcel or lot in the Fairway Boulevard Overlay District shall be subdivided, developed, improved or reconfigured in a manner that creates any new parcel or lot which has (i) less than two hundred (200) lineal feet of frontage along Fairway Boulevard unless the nearest point of such parcel or lot to the boundary of the right-of-way of Fairway Boulevard is at least two hundred (200) feet away or (ii) an area of less than 43,560 square feet. For purposes of Part Eleven (Planning and Zoning Code), “frontage along Fairway Boulevard” with respect to any parcel or lot shall mean a shared boundary with the right-of-way of Fairway Boulevard of the applicable length, if any, regardless of whether or not the principal access to the parcel or lot and/or building on the parcel or lot is from Fairway Boulevard.

**(d) Use Restrictions.** Notwithstanding any other provision of Part Eleven (Planning and Zoning Code) to the contrary, only detached single-unit residential dwelling development shall be permitted on any parcel or lot located in the Fairway Boulevard Overlay District. Any use that is prohibited within the underlying district classification shall remain prohibited. In addition, the following uses are expressly prohibited in the Fairway Boulevard Overlay District: attached single-unit dwellings; two-unit dwellings; duplexes; townhomes; multi-unit dwellings; commercial; industrial; institutional; group homes; and short-term rentals (less than 30 days). Accessory uses shall be permitted as provided and subject to the regulations set forth in Section 1103.02 of the Codified Ordinances of the City of Whitehall.

**(e) Public Infrastructure; Tree Protection.** No public street, road, sidewalk, multi-use path, or shared-use path infrastructure project shall be constructed or extended within or along the Fairway Boulevard right-of-way between East Main Street and Country Club Road unless expressly approved by ordinance following a public hearing where residents and property owners are given the opportunity to present concerns and objections and a formal finding of necessity by City Council supported by: (i) an exhaustive traffic study showing the need for such infrastructure; (ii) a community

impact analysis confirming widespread public support by the residents of the Fairway Boulevard Overlay District; and (iii) a comprehensive environmental review that assesses any negative impacts to residential character, trees, and wildlife. The public hearing shall be held not less than one hundred eighty (180) days, nor more than two hundred seventy (270) days, prior to the commencement of any demolition, construction, or grading activities for such a project. At the hearing, the City shall present in detail the proposed project's design, costs, funding, location, and anticipated impacts. Notice of the public hearing shall be delivered by regular mail to all electors residing in the Fairway Boulevard Overlay District not less than ninety (90) calendar days prior to the hearing date. No City funds, including grants, bonds, or capital improvement allocations, shall be appropriated, accepted, or expended for any public infrastructure project within the Fairway Boulevard Overlay District unless all conditions and procedures of this Section 1103.04 are fully satisfied. No tree having a height of forty-five (45) feet or more or a diameter at breast height (DBH) of twelve (12) inches or greater, and located within the public right-of-way of Fairway Boulevard, shall be removed or significantly damaged, unless the Director of Public Service determines that such action is necessary to abate an immediate threat to public health or safety due to disease, structural instability, or storm damage.

**(f) Construction; Interpretation.** This Section 1103.04, having been enacted by initiative petition and approved by a vote of the electors, shall be construed liberally in favor of effectuating the intent of the people as set forth in the ordinance adopting this Section. In any legal or administrative proceeding concerning its interpretation or enforcement, the intent of the voters shall be given paramount consideration, and the ordinance shall be presumed valid unless proven otherwise beyond a reasonable doubt. Except as expressly amended or superseded by this Section 1103.04, all restrictions, regulations, definitions, procedures, requirements, and other provisions contained in Part Eleven (Planning and Zoning Code) of the Codified Ordinances of the City of Whitehall shall remain in full force and effect. In the event of any conflict between the provisions of this Section 1103.04 and any other provision of Part Eleven, the provisions of this Section 1103.04 shall prevail and govern. The Fairway Boulevard Overlay District is hereby declared to supersede any conflicting provision of the Whitehall Codified Ordinances, including but not limited to zoning, subdivision, utility extension, capital improvements, and housing policies, whether adopted before or after this Section 1103.04. No subsequent ordinance or plan shall be interpreted to limit or override the provisions of this Section 1103.04 unless approved by a vote of the people. Any administrative, legislative, or quasi-judicial action taken by any City officer, department, commission, board, or body that conflicts with the express provisions of this Section 1103.04 shall be deemed invalid, void and without legal effect.

**(g) Nonconforming Uses.** Any lawful use of land, buildings, or structures existing on the effective date of the ordinance adopting this Section 1103.04 that does not conform to the provisions of this Section 1103.04 shall be deemed a legal nonconforming use and may continue, provided that such use is not voluntarily discontinued for a period of two (2) years or more. The continuation, modification, or cessation of such nonconforming uses shall be governed by Chapter 1121 (Nonconforming Uses,

Structures, Lots, and Signs) of the Codified Ordinances of the City of Whitehall and Section 713.15 of the Ohio Revised Code.

**(h) Anti-Circumvention.** Neither the City nor any person or entity shall take any action, including subdividing land, altering access points, or constructing or reconfiguring streets, driveways, parcels, lots or structures, for the purpose of circumventing the intent or effect of this Section 1103.04. Any such action shall be invalid, void and unenforceable. The City shall not approve any rezoning, variance, permit, plat, planned unit development, subdivision, construction or public infrastructure project that would facilitate or effectuate such circumvention.

**(i) Amendment.** This Section 1103.04 may only be amended or repealed in accordance with Section 15(l) of the City Charter.

**(j) Private Right of Action.** Any resident, property owner, elector, or neighborhood association within the boundaries of the Fairway Boulevard Overlay District shall have standing to enforce the provisions of this Section 1103.04 through an action for declaratory and injunctive relief in any court of competent jurisdiction. If the plaintiffs in any such action prevails, the court shall have discretion to award the plaintiffs their costs, including reasonable attorney's fees, expert witness fees, and other litigation expenses. The availability of this private right of action shall be in addition to, and not in lieu of, any other remedies provided by law or equity, and shall not preclude the enforcement of this Section through any lawful means.

**(k) Severability.** If any subsection, paragraph, clause, phrase, or portion of this Section 1103.04 is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Section. The electors of the City of Whitehall, having adopted this Section 1103.04 through an initiative petition pursuant to Section 15 of the City Charter, declare that they would have adopted each and every part, subsection, sentence, clause, and phrase of this section, irrespective of the fact that any one or more parts may be declared invalid. It is the express intent of the electors that the provisions of this section be given the maximum possible effect consistent with applicable law.

**SECTION 3:** The Zoning Map is hereby amended to reflect the addition of the Fairway Boulevard Overlay District and the zoning changes of the properties located therein that are set forth in this ordinance.

**SECTION 4:** The Service Department is hereby directed to immediately and ministerially update the Zoning Map to reflect these changes and make it available for public inspection.

**SECTION 5:** Pursuant to Section 15(l) of the City Charter, this ordinance shall not be repealed, amended or supplemented except by an electoral vote.

**SECTION 6:** All persons are hereby placed on notice that development activity inconsistent with the provisions of this ordinance may be subject to removal, reversal, or legal action in the event this ordinance is adopted by the electors. It is the intent of this ordinance that: (a) A temporary moratorium shall be imposed on the acceptance, processing, approval, or issuance of any zoning amendment, variance, subdivision approval, site plan approval, permit, or other official action by any department, officer, or agency of the City that would authorize or facilitate development, subdivision, or construction activity within the Fairway Boulevard Overlay District that is inconsistent with the provisions of Section 1103.04; (b) This moratorium shall become effective immediately upon the filing of the initiative petition containing this ordinance with the City Attorney and shall remain in effect until the ordinance is either (i) rejected by the voters, or (ii) adopted and effective pursuant to Section 15 of the City Charter, in which case the permanent zoning restrictions set forth in this ordinance shall apply in lieu of the moratorium; and (c) Any zoning, subdivision, permit, or development approval granted during the pendency of the moratorium or after the filing of the initiative petition that is inconsistent with the provisions of Section 1103.04 shall be deemed null and void and of no legal effect unless this ordinance is rejected by the electors. This moratorium is a lawful exercise of the City's police power under Article XVIII, Section 3 of the Ohio Constitution, and is enacted for the legitimate legislative purpose of maintaining existing zoning conditions during the pendency of an initiative zoning amendment. Subject to the City Charter, the moratorium shall be self-executing and shall not require further action by City Council.

**SECTION 7:** This ordinance shall become effective at the earliest time provided by law.