

## ORDINANCE NO. 2014-1

### AN ORDINANCE GOVERNING NUISANCES

#### 1. COMMON LAW AND STATUTORY NUISANCES.

In addition to what is declared in this chapter and code to be a public nuisance, those offenses which are known to the common law and the statues of Indiana as public nuisances may, in case any thereof exist within the town limits, be treated as such and be proceeded against as is provided in this chapter and code, or in accordance with any other provisions of law. Wherever the word **NUISANCE** is used in this chapter, it refers to a public nuisance.

#### 2. CERTAIN CONDITIONS DELCARED NUISANCES.

The following conditions within the town constitute and are declared to be nuisances:

- (A) *Dangerous trees in public ways.* Any tree, stack, or other object standing on such premises in such condition that it shall, if the condition is allowed to continue, endanger life, limb, or property, or cause hurt, damage, or injury to persons or property on the public streets or public ways adjacent thereto, by the falling thereof or of parts thereof.
- (B) *Accumulation of rubbish.* An accumulation on any premises of filth, refuse, trash, garbage, or other waster material which endangers the public health, welfare, or safety, or materially interferes with the peaceful enjoyment by owners or occupants of adjacent property because of the danger of its catching or communication fire, its attracting and propagating vermin, rodents, or insects, or blowing into any street, sidewalk, or property of another. It shall be the duty of persons owning or being in charge of those business establishments whose patrons purchase goods or services from their automobiles, commonly known as "drive-ins," to furnish sufficient covered receptacles for the deposit of wastes created in the operation of such business, and to clean up such wastes as are not deposited in receptacles at the close of business of each day (or if such business operates continuously, at least once each day), and at such other times when weather conditions are such that waste from the operation of such business is being blown to adjoining premises.
- (C) *Noxious odors or smoke.* Emissions from premises into the surrounding atmosphere of such odors, dusts, smoke, or other matter as to render ordinary use or physical occupation of other property in the vicinity uncomfortable or impossible.
- (D) *Noise.* Noise noxious enough to destroy the enjoyment of dwelling houses or other uses of property in the vicinity by interfering with the ordinary comforts of human existence.
- (E) *Storage of explosives or combustibile material.* Storage on the premises of such combustibile or explosive material as to create a safety hazard to other property or persons in the vicinity.

(F) *Open wells.* The maintenance of any open or uncovered, or insecurely covered, cistern, cellar, well, pit, excavation, or vault situated on private premises in any open or unfence lot or place.

(G) *Trees and shrubbery obstructing streets and sidewalks.* The growing and maintenance of trees with less than 14 feet clearance over streets or less than eight feet over sidewalks, or the growing and maintenance of shrubbery in excess of three feet in height within a radius of 20 feet from the point where the curb line of any street intersects the curb line of another street. No shrub shall be planted between the curb line and the property line of any street within a radius of 20 feet from the point where the curb line of any street intersects with the curb line of another street.

### **3. TEST FOR NUISANCE.**

Whether or not a particular annoyance of the character listed in #2 constitutes a nuisance shall depend on its effect on persons of ordinary health and average sensibilities, and not on its effect on persons who are delicate or supersensitive, or whose habit, tastes, or conditions are such that they are never sensible of any annoyance.

### **4. NUISANCE CREATED BY OTHERS.**

For the purpose of this chapter, it shall not be essential that the nuisance be created or contributed to by the owner, or tenants, or their agents or representatives, but merely that the nuisance be enacted or contributed to by licensees, invitees, guests, or other persons for whose conduct the owner or operator is responsible, or by persons for whose conduct the owner or operator is not responsible, but, by the exercise of reasonable care, the owner or operator ought to have become aware of.

### **5. INSPECTION OF PERMISES.**

For the purpose of carrying the provisions of this chapter into effect, it is made the duty of all officers and employees of the town to report the existence of nuisances to the Town Marshal and/or the Building Commissioner and/or the Street Commissioner and/or the Fire Chief (hereinafter the "Enforcing Authority"). The Enforcing Authority, or other employees designated by the Town Council shall be permitted to visit or enter into or on any building, lot, grounds, or premises within the limits of this town to ascertain and discover any such nuisances.

### **6. ABATEMENT OF NUISANCES.**

(A) In any case where any nuisance may be found to exist, it shall be the duty of the Enforcing Authority to serve notice on the owner or occupant of the premises where such nuisance exists, or on any other person so causing such nuisance, to abate such nuisance within reasonable time. In determining such reasonable time, the Enforcing Authority shall take into consideration the degree of threat to the public health, safety, and welfare and the means required to abate such nuisance. It shall not be necessary for the Enforcing Authority to designate in this notice the manner in which any nuisance shall be abated unless the Enforcing Authority shall deem it

advisable to do so. However, the Enforcing Authority shall indicate in such notice the date within which the nuisance must be abated.

- (B) If the owner, occupant, or other person served with a notice to abate the nuisance shall refuse or neglect to abate the nuisance within the designated time after such notice is given, such person shall be subject to the penalties provided in #16. In addition, the Enforcing Authority may cause such nuisance to be abated in any manner authorized by law, including the institution in the name of this town of an action therefor against the owner, occupant, or other person for the recovery of the amount of expense of such abatement.
- (C) The Enforcing Authority shall notify the office of the Clerk-Treasurer of the cost of abating any nuisance. The Clerk-Treasurer shall notify the owner, occupant, or other person against whom the abatement proceedings were brought as to the cost of abatement; and if said cost is not paid by the owner within 30 days, the proper officers of the town shall proceed to collect the same either by causing said costs to be placed on the tax duplicate or by suit.
- (D) The requirement for service of notice under the provisions of (A) and (C) above may be complied with by mailing such notice by registered or certified mail to the last known address of the person sought to be notified, or by personal service of this notice by any police officer so directed.

## **WEEDS AND TREES**

### **7. WEEDS.**

- (A) All owners of real estate located within the town limits shall cut and remove rank weeds and other rank vegetation growing thereon.
- (B) The Enforcing Authority is directed and authorized to issue a five-day written notice to the owner to remove such rank weeds or other rank vegetation. Such notice may be served either personally on the owner or sent by certified mail return receipt requested, addressed to his last known address, if he is nonresident of the town.
- (C) If the landowner fails to remove such rank vegetation within the time prescribed, the Enforcing Authority may cause such rank weeds and vegetation to be cut and removed. The Clerk-Treasurer shall make a certified statement of the actual cost incurred by the town in such removal, which statement shall be delivered to the owner of the real estate by a member of the Ingalls Police Department, or by certified mail with a return receipt. The owner shall, within ten days from receipt of such notice, pay the amount to the Clerk-Treasurer.
- (D) If the owner fails to pay said sum within the time prescribed, the Clerk-Treasurer shall file a certified copy of the statement of costs in the Auditor's office of Madison

County, and the Auditor shall place the amount so claimed on the tax duplicate against the lands of the landowner affected by the lien, and the same shall be collected as taxes disbursed to the General Fund of the town.

## **JUNKED OR ABANDONED VEHICLES**

### **8. JUNKED OR ABANDONED VEHICLES DECLARED NUISANCES; EXCEPTION.**

Because of the detriment to the general and economic welfare of the public, danger to health from vermin, insects, and rodents, and because of the danger to the safety of children who are attracted to them, disassembled, inoperable, or any junked, wrecked, or abandoned motor vehicles are declared to be nuisances, except in lawfully operated junkyards of automotive sales or repair businesses.

### **9. DEFINITION.**

For purposes of this chapter, **MOTOR VEHICLE** shall mean any vehicle which is or was equipped with a motor, and shall also mean any part of a motor vehicle which is detached from the main portion of any vehicle.

### **10. STORING, ALLOWING TO REMAIN ON PROPERTY PROHIBITED.**

It shall be unlawful for any person to store or allow to remain in the open on any public or private property within the corporate limits of the town any disassembled or inoperable and unlicensed, or any junked, wrecked, or abandoned motor vehicle for a period of 3 or more days on public property, or for a period of 15 or more days on private property, unless it is in connection with a duly licensed junkyard or an automotive sales or repair business which is located in a properly zoned area.

### **11. REMOVAL FROM PRIVATE PROPERTY.**

Whenever the Town Marshal shall find any such vehicle placed or stored in the open on private property within the corporate limits of the town, he shall issue an order to the owner of such vehicle to remove such vehicle within 10 days. Notice of such order shall be placed on the vehicle, and copies of the notice shall be served on any adult occupying real estate on which the vehicle is located, and also on the owner of the vehicle, if his name and whereabouts be known. If no occupant of the real estate or owner of the vehicle can be found, a notice affixed to any building on the real estate shall constitute notice to the owner and occupant of the real estate and owner of the vehicle. If there is no building on the real estate, the notice may be affixed elsewhere on the real estate. If the vehicle is not removed within 10 days pursuant to the order and notice, and if the order is not stayed by the issuing officer pursuant to the order and notice, and if the order is not stayed by the issuing officer pursuant to a written request showing good cause for a permanent or temporary stay, the Town Marshal shall cause the vehicle to be removed by a junk or salvage yard or wrecker service, the cost and expense of the removal by the junk or salvage yard to be paid by the owner of the vehicle.

**12. REMOVAL FROM PUBLIC PROPERTY.**

Whenever the Town Marshal shall find any such vehicle placed or stored in the open on public property within the corporate limits of the town, he shall issue an order to the owner of the vehicle to remove the vehicle within 2 days. Notice of such order shall be placed on the vehicle. If the vehicle is not removed within 3 days pursuant to the order and notice, the Town Marshal shall cause the vehicle to be removed by a junk or salvage yard or wrecker service, the cost and expense of the removal by the junk or salvage yard or wrecker service to be paid by the owner of the vehicle.

**13. EXEMPTION.**

The provisions of #8 through 12 shall not apply to auto salvage yards or junkyards that are duly operated and licensed by the State of Indiana or the town, and are operated and located in a properly zoned area.

**14. DISPOSAL.**

Motor vehicles, or any parts thereof, which have been impounded pursuant to #8 through 12 shall be disposed of according to law.

**15. ABANDONMENT OR STORAGE OF CERTAIN FURNITURE AND APPLIANCES**

It shall be unlawful for any person to store, place, or allow to remain in the open, on any public or private property, any household furniture, any discarded, abandoned, unused, or any other refrigerator, freezer, ice box, washing machines, dryers, or other appliances.

**16. PENALTY.**

- (A) Whoever creates or maintains any nuisance defined in this chapter, or elsewhere in this code, or by any other law, or ordinance of the town, and who fails or refuses to abate such nuisance when so ordered, shall be fined not more than \$200.
- (B) A separate offense shall be deemed committed on each day during or on which the violation occurs or continues beyond the date fixed by the Enforcing Authority for abatement of said nuisance.
- (C) The action against any person to enforce a penalty by the town shall constitute a separate and additional legal remedy, and the fact that any proceedings by way of an injunction, or for the abatement of any such nuisance, has been or may be instituted by the town and be pending or concluded, shall not affect this section or chapter or be considered in any way as a defense to such action for the penalty herein prescribed.
- (D) Any person, firm, or corporation who violates any of the provisions of #7 through 15 or who interferes in any way whatsoever with the due process of enforcement of any of the provisions of those sections, or who does not obey within the time fixed any order issued pursuant thereto, and who shall be found guilty thereof, shall be fined not less than \$1 nor more than \$200 for each offense. Each motor vehicle involved shall constitute a separate offense, and a separate offense shall be deemed committed on each day during which a violation occurs or continues.

**17. EFFECTIVE DATE.**

This ordinance becomes effective upon required passage and publication.

Cm/02/2015

ORDINANCE NO. 042318

AN ORDINANCE MENDING ORDINANCE NO. 2014-1

**WHEREAS**, the Town Council of the Town of Ingalls, Indiana, has heretofore adopted Ordinance No. 2014-1 regarding the governing of nuisances; and

**WHEREAS**, since the passage of said Ordinance, it has come to the attention of the Town Council, through members of the staff, that it would be in the best interest of enforcement of said Ordinance for the benefit of the health, safety, and welfare of the citizens of Ingalls, Indiana, that said Ordinance be amended to define rank weeds or other rank vegetation to be prohibited once it reaches a height of eight (8) inches.

**THEREFORE BE IT ORDAINED** by the Town Council of the Town of Ingalls, Indiana, as follows:

**SECTION I**

Ordinance No. 2014-1, subsection 7(A) shall be amended to read as follows:

All owners of real estate located within the Town limits shall cut and remove rank weeds and other rank vegetation growing thereon to a height of eight (8) inches or more. All parcels/land located within a floodplain, wetlands, woods, or undeveloped areas may be exempted from the above requirements as determined by the Town Manager upon request of a landowner. In determining whether a parcel of land is exempt from the provisions of this section, the Town Manager shall consider the following:

- (1) The impact of the exemption upon surrounding property owners in their use of their real estate;
- (2) The ecological impact of the exemption, including the potential impact upon wildlife habitat, water quality, air quality, flood control, and erosion control;
- (3) The contributory effect of the exemption upon the creation or preservation of green space and natural undeveloped land; and
- (4) The general health, safety, and welfare of the citizens of the Town.

Trees, shrubberies, flowers, ornamental grasses, and agricultural crops, including hay and pasture, exceeding eight (8) inches, are not to be considered weeds or rank vegetation that may be considered a nuisance under subsection 2(G) of this ordinance.

**SECTION II**

This Ordinance shall be in full force and effect from and after its passage and due publication.