

ORDINANCE No. 2018-\_\_\_\_\_

NUISANCE ORDINANCE OF THE LINDEN TOWN COUNCIL

An Ordinance Amending  
Chapter 62.01 on Prohibiting Public Nuisances in the Town of Linden

WHEREAS, the Town of Linden wishes to amend Chapter 62.01 regarding Public Nuisances,

NOW, THEREFORE, BE IT ORDAINED, by the Town Council of the Town of Linden, Indiana, that:

Chapter 62.01 is hereby amended and replaced in its entirety as follows:

## CHAPTER 62: NUISANCES

Section

62.01 Public Nuisance

### § 62.01 PUBLIC NUISANCES.

#### I. Definitions

For purposes of this chapter, the following definitions shall apply unless the content number clearly indicates or requires a different meaning.

**ABANDONED VEHICLE.** Any of the following:

- 1) A vehicle located on public property illegally, or a vehicle left on public property continuously without being moved, for more than 5 days;
- 2) A vehicle mechanically inoperable located on public property in a manner as to constitute a hazard or obstruction to the movement of pedestrian or vehicle traffic on a public right-of-way;
- 3) A vehicle that has remained on property without consent of the owner, or person in control of that property for more than 15 days;
- 4) A vehicle form which the engine, transmission or differential has been removed, or that is otherwise partially dismantled or inoperable and left on public property;
- 5) A vehicle that has been removed by a towing service or a public agency upon request of an officer enforcing a statute or ordinance;
- 6) A vehicle that is 3 or more model years old and mechanically inoperable, and is left on private property continuously in a location visible from public property for more than 21 days; or
- 7) All other terms defined in I.C. 9-22-1.

**ABATEMENT PERIOD.** The period of time the owner has to correct the violation stated

on the violation notice issued by the town personnel. The initial abatement period is 15 days. This time may be extended up to 45 days, depending upon the severity of the final version violation, and only at the discretion of the Town Council, Town Marshal, and Chief of the Fire Department or other designee of the Town of Linden.

**COUNCIL.** The Town Council of the Town of Linden.

**DEBRIS.** The remains of something broken down, unused for prolonged periods, discarded, abandoned, dilapidated or destroyed, which accumulate and pose a threat to the health, safety and welfare of persons and property, and includes by way of illustration and not limitation; refuse; accumulation of items on public or private property which could pose serious health or safety risks to persons or property; yard refuse, rank vegetation cut but not disposed of, animal remains; trash; junk cars, parts of automobiles or other vehicles which are no longer mobile; pieces or sheets of glass (whether fractured or whole); wood, particle board, bark, wood chips, lumber or other building materials; metal items from any source (whether rusted or not); fencing or other barrier with exposed nails, splinters or sharp edges; wire, cables, hoses, ropes, chains or other items which pose a choking or strangling threat to children or other persons; rubber products, gasoline, gasoline cans (whether in approved or unapproved containers for storage), oil cans, oil pans, oil or any other type of surface coating; industrial detergents and mineral cleaners; grease, alone or in any container, chemical cleansers; refrigerants (including Freon); acetylene, propane, oxygen or other chemical used for welding or manufacturing process accumulated and stored (whether properly or improperly) in containers which are unsafe or unsafely stores; any other items not herein mentioned which accumulate and pose a threat to the health, safety and welfare of person and property.

**ENVIRONMENTAL PUBLIC NUISANCE.** A thing, act, occupation, condition or use of property which shall continue for a length of time as to:

- 1) Annoy or may annoy, injure or has the potential to injure, or endanger or has to the potential to endanger the comfort, health, repose, safety or welfare of persons or property;
- 2) In any way renders the public insecure in life or in the use of property;
- 3) Greatly offends the public morals or decency;
- 4) Unlawfully and substantially interferes with or may interfere with, obstruct or tend to obstruct, or render and have the potential to render any street, alley, highway, navigable body of water, or public right-of-way dangerous or potential danger to

person or property;

- 5) Is injurious to health, indecent, offensive to the senses or an obstruction to the full use of property, so as essentially to interfere with the comfortable enjoyment of life or property;
- 6) Any growth of weeds, grass or other rank vegetation on private or public property which is neglected, disregarded or not cut, mowed or otherwise removed and/or which has attained a height of 6 inches or more;
- 7) Any accumulation of dead weeds, grasses or brush on private or public property;
- 8) Any poison ivy, ragweed, rank vegetation, poisonous plant or plants detrimental to health, growing on any private or governmental property;
- 9) Property which has been allowed to become a health or safety hazard, or which has accumulated litter, contains debris, an unsafe building, abandoned vehicles, waste products, graffiti or any other items which pose a threat to the health, safety and welfare of persons and property, unless specifically authorized under existing laws and regulations; and/or
- 10) By definition, a **PUBLIC HEALTH NUISANCE** includes, but is not limited to the following specific specifications:
  - a. All decayed, harmfully adulterated or unwholesome food or drink offered for sale to the public;
  - b. Carcasses of animals, birds or fowl not carried off or otherwise disposed of in a sanitary manner within 24 hours after death;
  - c. Accumulations of decayed animal or vegetable matter, trash, rubbish, rotting lumber, bedding, packing material, junk vehicles, scrap metal or any material in which fies, mosquitoes, disease-carrying insect, rats or other vermin may breed, or may be a fire hazard;
  - d. All stagnant water in which mosquitoes, flies or other insects may multiply;
  - e. Garbage can which are not fly-tight, or not kept clean;
  - f. Pollution of any public well, cistern, stream river, lake, canal or body of water by sewage, waste, creamery, industrial wastes or other substances;
  - g. The escape of smoke, soot, cinders, noxious acids, fumes, gases, flying ash or industrial dust within the town limits in quantities which may cause injury or does cause injury endangering the health of persons of ordinary sensibilities or to threaten or cause substantial injury to property;
  - h. Any use of property, substances or things within the town limits emitting or causing foul, offensives, noisome, nauseous, noxious or disagreeable odors, effluvia or stenches extremely repulsive to the physical senses or ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within the town; or any slaughter house;

- i. All abandoned wells not securely covered or secured from public use;
- j. Any accumulation of junk, rubbish, scrap metal, automotive parts, building materials, machinery, dead trees or parts of dead trees, upon any premises in a residential or non-residential area;
- k. Any abandoned refrigerators, iceboxes or similar containers from which the doors and other covers have not been removed, or which are not equipped with a device for opening from the inside by pushing only with the strength of a child, or which may or may not contain rust, or which have refrigerant in any part thereof or which still have electrical cables attached regardless of age; or
- l. Any sign of any size, shape, content or purpose, which infringes upon the town's right-of-way easement from the center of the road to location of the sign, or which poses a serious threat to the health, safety or welfare of the citizens of Linden.
- m. Whenever any animal of any species, whether or not it is kept as a household pet, is allowed to run at large in the town or is a hazard to the health and safety of any person, or is allowed to disturb the peace and quiet of 1 or more neighbors, whether through loud and frequent barking, damage to property, noxious odor, or otherwise.

**GRAFFITI.** Markings of any kind, regardless of content, that may cause or do cause passerby to obstruct, delay or disturb the regular flow of traffic (whether pedestrian or automobile), thereby creating a potential threat to the health, safety and welfare of citizens or property. The markings are defined as any markings which deface, deform, mar or which cause the defacing, deforming or marring of any public or private property, regardless of ownership or possessory interest therein, including by way of illustration and not limitation, buildings, trees, lampposts, poles, hydrants, bridges, piers, sidewalks, streets, alleyways or surface of any public or private property located upon any public thoroughfare or right-of-way, or upon any public place within the town. However, this section shall not prohibit the posting of notices required by law to be posted.

**JUNK.** Any articles in any form composed of or consisting of any of the following enumerated secondhand, discarded, abandoned or case-off metals or materials, namely iron, brass, bronze, copper, tin, zinc, lead or any other metals or compounds thereof, broken glass, rags, clothing, rubber, plastics, synthetic substances, fabrics, bottles, papers, feathers, waste material, any compound or by-product of the foregoing items. **JUNK** shall also include and mean wrecked, abandoned, dismantled or immovable automobiles or parts thereof.

**JUNK CAR.** Any motor vehicle which does not bear a currently valid license plate, and is not kept in a garage or building, regardless of age or condition.

**OWNER.** Any 1 or more of the following:

- 1) The owner or owners in fee simple of a parcel of real estate including the life tenant or tenants if any;
- 2) The record owner or owners as reflected by the most current records in the county or township assessors' of the county or township in which the real estate is located; or
- 3) The purchaser or purchasers of real estate under any contract for the condition sale thereof.

**UNSAFE BUILDING.** Any building or structure, or any part of a building or structure, defined as unsafe by I.C. 36-7-9-4, as may be amended from time to time.

## II. NUISANCE PROCEDURES

All owners of real estate in the Town shall be under a duty to remove or cause to be abated any public nuisances as defined herein. The duty shall also extend to the parkway or other strip of ground lying between private property and the curb or paved portion of the street.

The Town Marshal, or other Town official who may be designated by the Town Council shall enter upon and inspect properties in the Town, and if real estate is found whereon such public nuisances exist, he shall serve notice in writing on the owner or such real estate requiring the owner to remove or abate such nuisances within fifteen (15) calendar days after serving such notice. Service of the notice shall be made by personally delivering a copy of the notice to the premises and delivering the same to the owner thereof, or posting notice upon the entry way to the premises if the owner of the premises cannot be located or refuses to accept delivery of the notice, or by sending a copy of the notice by certified mail or other public means by which a written acknowledgment of the receipt may be requested and obtained from the addressee. Service shall be deemed to have been made as of the date of the posting of such mail or notice. The Town Marshal or other Town official shall report any failure to act to the Town Council. Such Town Council may thereupon, after review of the facts, order the appropriate department of the Town to

enter upon such real estate and remove and abate such nuisance. Such department, after having performed such work, shall certify the actual cost of performing the same. The Town shall thereupon bill the owner for such work. If the owner fails or refuses to pay such charges within a reasonable time, the Town shall certify such charges to the appropriate county official to be taxed against such real estate and collected as other taxes were collected. The liability for the expense of removing or abating such nuisance shall be in addition to any penalty for violation of this action of the Town Code which may be imposed.

A nuisance is any act, place or condition which is offensive or dangerous to the public health, safety, peace, comfort, or response and includes but is not limited to accumulation of filth, decaying organic matter, stagnant water, a failure to cut, mow or otherwise eliminate weeds or rank vegetation on property within the Town, the existence on private property in close proximity to any municipal property or governmental right-of-way or easement which because of its location, size or condition interferes with the public safety or lawful use of such property, right-of-way or easement, the existence of any tree, shrub, vine or plant standing adjacent to any public street so as to obstruct thereby the division of travelers along such street, or dead, decayed broken or dangerous limbs overhanging or being close to a public way, the overhanging of any tree or other vegetation over the surface of a public way below a clear height of at least 8 feet, the failure to maintain a building or a premises in a clean, orderly or sanitary manner, failure to maintain any exterior property in a clear and sanitary condition free from any accumulation of rubbish or garbage, existence of any building or excessive structure which is structurally unsound or otherwise unsafe and dangerous to life, limb or property.

Whenever the Town Marshal, or any other Town official who may be designated by the Town Council, has reason to believe that a nuisance exists on any property in the town, he or she is granted full authority under Indiana law to enter such property for the purposes of inspection for such a nuisance. If, upon such inspection, a nuisance is found, the inspecting officer shall notify the owner or occupant in writing to do whatever is necessary to abate the nuisance pursuant to the provisions and within the time provided by Section B.

### III,           **PENALTIES.**

#### **A. Fines**

Any person, firm or corporation who violates any provision of this chapter shall, upon conviction thereof, be fined in an amount of \$100.00 and may be subject to other penalties provided in the Linden Town Code. A separate offense shall be deemed committed upon each day during which a violation occurs or continues after the time has passed for correction stated in the Notice of Noncompliance. Any person, firm or corporation adjudged responsible of violating any provision of this subchapter may also be adjudged to pay the costs of protection. In addition, the Town Council may;

- (1) Declare the premises to be unsafe;
- (2) Issue an emergency order where immediate action is required to protect the health and safety of the public or of the occupants of the premises; and
- (3) Seek any of the additional relevant remedies provided by state law or local ordinance.

#### **B. Failure of Owner or Occupant to Correct Noncompliance: Costs of Removal**

In the event of the owner or occupant of the premises fails to correct the public nuisance condition of the premises as specified in the notice of noncompliance within the time required by Section B, the Town Council may proceed to correct the condition and shall keep an account of all costs incurred in correction of the public nuisance condition. The Clerk-Treasurer shall may a certified statement of all costs incurred by the Town involved in correcting the public nuisance condition including attorney fees, to be issued immediately to the owner or occupant of the premises in the same manner as provided for issuance of the nuisance condition including attorney fees, to be issued immediately to the owner or occupant of the premises in the same manner as provided for issuance of the notice of violation by this subchapter. The owner or occupant shall pay the amount of all costs incurred by the city as noted on the certified statement to the Clerk-Treasurer within 30 days from the date certified statement is served upon the owner or occupants.

##### **(1) Lien: Delinquent Accounts**

- (a) All costs by the Town to correct a public nuisance as provided in this subchapter, shall be and the same is hereby declared a lien in favor of the Town of Linden upon

and against the premises on which the corrective activity is undertaken. All costs, together with any penalty applicable thereto as provided by this Chapter, shall be collected in any manner provided. The lien herein created is superior to and takes priority over all other liens except for the lien for taxes.

(b) In the event the full amount due the Town is not paid to the Clerk-Treasurer by the owner of the premises within 30 days after receipt of the certified statement expenses as provided herein, the costs shall thereupon become and is hereby declared to be delinquent and a penalty of 25% of such cost shall thereupon attach to the cost and be included in the lien, as herein provided, and shall be collectible in addition to the cost of such removal and disposal.

(c) In the event a delinquency occurs for nonpayment of the costs set out in the certified statement, the Clerk-Treasurer shall record in the office of the County Recorder a notice of lien setting forth the name or names of the owner of the premises upon which the costs have become delinquent, the description of the premises as shown by the records of the County Auditor and the amount of such delinquent costs and the penalty thereon. The lien shall attach to the premises described in the notice of lien from the recording of the notice of the lien.

**(1) Civil Action: Foreclosure for Nonpayment**

(a) If the costs incurred by the Town for the correction of the public nuisance are not paid to the Town as herein provided and become delinquent, then the amount due the Town for such corrective action, the penalty thereon and all costs of collection thereof, including a reasonable attorney's fee, may be recovered by the Town in a civil action brought in the name of the Town against the owner of the premises responsible for payment thereof.

(b) If the costs incurred by the Town for the correction of a public nuisance is not paid to the Town as herein provided and becomes delinquent, the Town, as an additional or alternative remedy, may foreclose the line created by this subchapter as a means of collection the amount due the Town for sale of the premises be made without relief from valuation and appraisal laws.

(c) In the event the costs incurred by the Town for nuisance correction is not paid to the Town as herein provided and becomes delinquent, the Town, as a further additional or alternative remedy may authorize the Clerk-Treasurer to certify to the County Auditor a true copy of the notice of lien and the amount of delinquent costs and any penalty thereon which shall then be charged to the premises on the tax duplicate and shall be collected in a manner that taxes are collected by law. Upon collection of the costs and penalty thereon, the County Auditor or any other appropriate official shall pay to the Clerk-Treasurer the total amount of the costs so collected together with the penalty thereon.

#### **IV. OTHER LEGAL REMEDIES**

In addition to the enforcement remedies provided by this subchapter, the Town may enforce the provisions of this subchapter, by all other legal remedies, including but not limited to, the use of a mandatory injunction to required abatement of any public nuisances within the Town by the owner or occupant of the affected premises. In all such actions brought by the Town to enforce the provisions of this subchapter, the Town is entitled to recover all cost of such litigation, including reasonable attorney fees and all costs of collection.

#### **V. TRANSFER OF OWNERSHIP**

It shall be unlawful for the owner of any premises who has received a notice of violation of this subchapter to sell, transfer, mortgage, lease or otherwise dispose of the premises to another until the provisions of the notice of violation have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee, or lessee a true copy of any notice of violation and shall furnish the Town a signed and notarized statement from the grantee, transferee, mortgagee, or lessee acknowledging the receipt of such notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by the notice of violation.

## VI. OTHER ACTS CONSTITUTING NUISANCE

The following shall also constitute a nuisance as prohibited by this ordinance:

- (1) Whenever premises shall not be graded and maintained so as to prevent the accumulation of stagnant water thereon, or within any building or structure located thereon.
- (2) Whenever buildings shall not be kept free from insect and rodent infestation. Where insects and rodents are found, they shall be promptly exterminated by acceptable processes which will not be injurious to human health. After extermination, proper precautions shall be taken to prevent infestation.
- (3) Whenever any property is abandoned, neglected, or disregarded so as to permit the same to cluttered with an accumulation of litter or waste including but not limited to waste paper, rags, cans, bottles, boxes, lumber, metal, garbage, trash, disused or inoperable vehicles, trailers, machinery, appliances, or furniture thereon, unless specifically authorized by law.
- (4) Whenever any storage of manure odor or dust producing materials of any kind is allowed to occur within 50 feet of any adjoining lot line.
- (5) Whenever any animal other than a household pet is kept within the Town limits, provided, however:
  - (a) The term “household pet” as used in this chapter shall not include ducks, chickens, rabbits, goats, sheep, swine or other animals not customarily kept as family pets.
  - (b) One horse or pony may be kept within a private stable if such lot or tract contains at least two acres and one additional horse or pony may be kept for each additional one-half acre.
  - (c) Customary farm animals may be kept on a non commercial basis when adequately housed and fenced on a parcel of land not less than 10,000 square feet in area.

- (d) Any area now within the corporate limits or hereafter annexed which is not used as part of a farming operation, saddle club, veterinarian, sale barn, 4-H or fairground, and associated activities may contain such usage.

- (6) Whenever stables and buildings housing other farm animals are located closer than 100 feet of any lot line.

## **VII. CONTINUOUS ABATEMENT.**

Any property owner who fails to remove weeds and other rank vegetation, as defined in this ordinance, shall be deemed to be in violation of this section and may be issued a continuous abatement notice as set forth in this Section. Notice of violation by the Town Council or its designee, shall be mailed to the property owner's address shown on the records of the Montgomery County Auditor by the method required by Indiana Code 36-7-10.1-3, or an equivalent service permitted under IC 1-1-7-1, to the owner of record of real property with a single owner or to at least one (1) of the owners of real property with multiple owners, at the last address of the owner for the property as indicated in the records of the Montgomery County Auditor on the date of the notice. One letter within a calendar year shall be deemed sufficient notice for each and every lot, parcel, and lands owned by the offender within the corporate limits of the Town. The Town shall have the right to cut and remove weeds and rank vegetation upon the property owner's failure to do so within fifteen (15) days after the mailing of notice of violation. A continuous abatement notice may be posted at the property at the time of abatement in the event the Town initially obtains service upon the property owner as required by IC 36-7-10.1-3. Said continuous abatement notice shall serve as notice to the real property owner that each subsequent violation during the same calendar year for which the initial notice of the violation was provided may be abated by the Town or its contractors.

The Town shall issue a bill to the property owner at the address shown on the records of the Montgomery County Auditor. The bill shall include the actual cost incurred by the Town either by using its own employees or an independent contractor plus administrative costs. Administrative costs of \$35.00 shall be charged for the first cut order during a calendar year. Second and subsequent cut orders during a calendar year shall include the administrative cost of \$50.00. If a property owner owns more than one property, the property owner will be charged the administrative cost of \$35.00 for the first property cut and the administrative cost of \$50.00 for each and every lot, parcel and land subsequently cut during the calendar year. In addition to the above, a property owner may be subject to a fines and penalties provided for under this ordinance.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

This ordinance shall take effect 30 days after publication.

Passed and enacted by the Town Council of Linden, Indiana on the \_\_\_\_\_day of \_\_\_\_\_, 2018.

Town Council of Linden, Indiana

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Attest: \_\_\_\_\_

Clerk Treasurer