

CURRENT

§ 95.01 PUBLIC NUISANCES; INTERPRETATION.

Wherever the word “nuisance” is used in this chapter, it refers to a public nuisance.
(’93 Code, § 6-45) (Ord. 316, passed 8-28-79)

§ 95.02 NUISANCES CREATED BY OTHERS.

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

(’93 Code, § 6-46) (Ord. 316, passed 8-28-79)

§ 95.03 INSPECTION OF PREMISES.

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 Council or the town's police officers and for this purpose the Superintendent of Streets, the Building Commissioner or officers or other employees designated by the Town Council shall be permitted, upon written permission by the owner of the property or court order, to enter into or upon any building, lot, grounds or premises, within the limits of this town to ascertain and discover any nuisances and to make examination thereof.

(’93 Code, § 6-47) (Ord. 316, passed 8-28-79; Am. Ord. 2015-006, passed 9-14-15)

§ 95.04 PUBLIC HEALTH NUISANCES.

(A) *Premises to be kept clean.* Allowing any premises to become or remain in a filthy condition or to be used or occupied in a manner that creates noxious or offensive smells or odors in connection therewith, or to allow on any premises the accumulation or creation of rubbish or other unwholesome and offensive matter or the breeding of flies, rodents or other vermin on the premises to the menace of the public health or the annoyance of people residing in the vicinity is hereby declared a nuisance. The person owning, occupying and/or controlling the premises is responsible for any violation of this section.

(B) *Accumulation of rubbish.*

(1) The accumulation of rubbish shall be considered a nuisance if there is caused or suffered an accumulation on any premises of filth, refuse, trash, garbage or other waste materials to such a degree that it 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 communicating fire, its attracting and propagating vermin, rodents or insects or its blowing into any street, sidewalk or property of another.

(2) 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 the business and to clean up the wastes as are not deposited in receptacles at the close of business of each day (or if the business operates continuously, at least once each day) and at other times when weather conditions are such that waste from the operation of the business is being blown to adjoining premises.

(C) *Noxious odors or smoke.* If there emits from premises into the surrounding atmosphere odors, dusts, smoke or other matter as to render ordinary use or physical occupation of other property in the vicinity uncomfortable or impossible such condition shall be declared a nuisance.

(D) *Stagnant water.* It is a violation of this section to allow any pool of stagnant water to accumulate and stand on any property.

(E) *Dressing poultry.* The dressing of poultry within the town limits for wholesale, or retail use is declared a nuisance unless at the end of each day the debris made in the dressing of the same shall be removed to some point beyond the town limits and destroyed.

ABATEMENT PROCEDURES

§ 95.15 NOTICES; FORM.

(A) (1) In any case where any nuisance may be found to exist, the town's police officers or the Building Commissioner shall cause to be served notice upon the owner or occupant of the premises where the nuisance exists, or upon any other person so causing the nuisance, to request that person to abate the nuisance by the date specified in the notice.

(2) In determining the specified date in the notice, the town's police officers or the Building Commissioner shall take into consideration the degree of threat to public health, safety and welfare and the means required to abate the nuisance. It shall not be necessary for the town's police officers or the Building Commissioner to designate in the notice the manner in which any nuisance shall be abated unless the police officers or Building Commissioner deem it advisable to do so.

(`93 Code, § 6-54)

(B) The requirement for service of notice under the provisions of §§ [95.15](#) through [95.17](#) shall be complied with by first attempting personal service of the notice by the town's police officers or the Building Commissioner on the owner, occupant or other person suspected of causing the nuisance, and then mailing the notice by registered or certified mail to the last known address of the person sought to be notified or the address of the property where the nuisance exists.

(`93 Code, § 6-57)

(Ord. 435, passed 1-12-87; Am. Ord. 2005-022, passed 9-12-05)

§ 95.16 REFUSAL OR NEGLECT TO ABATE.

(A) 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 time designated in the notice, the person shall then be served with a citation from the Building Commissioner citing him or her to the appropriate court to be prosecuted by the Town Attorney or cited in

before the Town Council for an enforcement hearing provided said ordinance comprises such language.

(B) If the nuisance is not then abated the Town Council may cause a nuisance to be abated in any manner authorized by law, including the commencement of an action in the name of the town against the owner, occupant or other person, to have the nuisance abated and to recover the amount of expenses for the abatement, any unpaid fine, costs, expenses and attorney fees incurred in the enforcement.

(`93 Code, § 6-55) (Ord. 435, passed 1-12-87; Am. Ord. 2014-001, passed 2-10-14)

§ 95.17 NOTIFICATION COSTS; COLLECTION REMEDIES.

(A) (1) If the Town Council has caused the nuisance to be abated, the Council may then notify the Clerk/Treasurer or Building Commissioner of the cost of abating the nuisance.

(2) The Building Commissioner shall then notify the owner, occupant or other person against whom the abatement proceedings were brought as to the cost of the abatement, the amount of fine owed, and any other costs, expenses or amounts owed by that person to the town.

(B) If the costs, fines or other amounts are not paid by the person within 30 days from the date of the Building Commissioner's notice, proper officers of the town shall then proceed to collect the same either by causing the costs to be placed on the tax duplicate of the property where the nuisance existed or by commencing suit against the violator.

(`93 Code, § 6-56) (Ord. 435, passed 1-12-87; Am. Ord. 2013-005, passed 6-24-13)

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PROPOSED AMENDED

§ 95.01 PUBLIC NUISANCE.

(A) In addition to what is declared in this chapter to be a public nuisance, those offenses which are known to the common law and the statutes of Indiana as a public nuisance may, when found to exist within the town limits, be treated as such and be proceeded against as provided in this chapter, or in accordance with any other provisions of law. Whenever the word *nuisance* is used in this chapter, it refers to a public nuisance. A nuisance is also defined as whatever is: (1) injurious to health; (2) indecent; (3) offensive to the senses; or (4) an obstruction to the free use of property to essentially interfere with the comfortable enjoyment of life or property, is a nuisance, and is subject to the terms of this chapter.

(B) No owner, occupant, tenant, or any other person having a substantial interest in any real or personal property within the town, or agent thereof, shall permit or allow to remain on or within the property or upon public ways abutting the real property any materials, trash, garbage, debris, or any other matter which is detrimental to the public health, comfort, safety, or the anesthetic well-being of the town.

(C) The following conditions shall be considered to constitute public nuisances for the purpose of this chapter; provided, however, this enumeration shall not be deemed or construed to be conclusively limited or restrictive, and is by way of example or illustration:

- (1) Litter.
- (2) Grass over nine inches high.
- (3) Fallen trees, dead trees, piled limbs, and rotten or decayed firewood.
- (4) Storage of boxes, appliances, furniture, household items and tires.
- (5) Demolition remains, including, but not limited to, discarded lumber from any sources.
- (6) Open excavations uncovered or improperly covered holes, whether lined or unlined, and dirt piles on any open or unfenced real property within the town, including open foundations.
- (7) Accumulated garbage and trash and any garbage or trash which is not kept securely in receptacles which are to be closed at all times except when being filled or emptied.
- (8) Structure defaced with paint or wording.
- (9) Any portion of real property which emits an unwholesome odor.
- (10) Any wastewater filth, offal, garbage, rubbish, animal waste, or human excrement which is deposited, allowed, or caused to be upon any public or private property.
- (11) Any water or other substance which is caused or permitted to flow onto or be deposited upon any public property or public way, except natural surface water drainage or sump discharge that was not established prior to the adoption of this ordinance.
- (12) Any dead domestic or wild animal.
- (13) The erection of a dam or any other obstruction by a private party which prevents the natural flow of water and causes it to collect or pool upon any public property, easement, or right-of-way.

(14) Any real or personal property which is infected with contagious disease and is likely to cause an immediate health hazard.

(15) The placing or accumulation on or within any real or personal property, or the permitting of same, of any matter which attracts or may attract rodents, insects, domestic animals, or wild animals in such a manner as to create a health hazard or unsanitary or dangerous condition.

(16) Any real or personal property used as a place of residence or habitation for sleeping that is maintained in such a way as to be dangerous or detrimental to life or health due to the lack of or defects in water, drainage, heating, plumbing or ventilation.

(17) Any dilapidated or condemned building, structure, or dwelling that is so out of repair that it constitutes a fire hazard liable to catch on fire or communicate fire to surrounding properties or was involved in a previous fire event that has not been repaired. Also, any dilapidated fence, whether made of wood, chain link, wire, or other fencing material, regardless of whether such fence constitutes a fire hazard.

(18) Any noxious odors, smoke, dust, or noise that emits from the premises into the surrounding atmosphere which creates an uncomfortable condition to surrounding properties.

(19) The storage of explosive, combustible, or other inflammable material which creates a safety or health risk.

(20) Any trees, shrubbery, weeds, snow, fences or other material which obstruct public ways or cause a visual barrier for vehicular traffic.

(21) Any junk automobiles, broken concrete, scrap metals, or automobile parts including, but not limited to, iron, steel, tin, zinc, copper, aluminum, or alloy being stored on real or personal property unless allowed by the town's Zoning Code.

(22) Any growth of weeds, grass or other rank vegetation as defined in § 95.45, including, but not limited to, ragweed, goldenrod, milkweed, Canadian thistle, dandelions, plantain and other broadleaf weeds, buckthorn, poison ivy, poison sumac, and burdock, which is either:

(a) Neglected, disregarded or not adequately managed or controlled, cut, mown, or removed; or

(b) Has attained a height of nine inches or more; or

(c) Is actually or immediately detrimental to the public health, safety, or welfare.

(23) Any animal or vegetable matter, or other substance liable to become putrid, offensive or unhealthy within the town.

(24) All obstructions caused or permitted on any street or sidewalk, or public or private alley to the danger or annoyance or inconvenience of the public, and all stones, dirt, carcasses, offal, filth, slop, vegetable matter or other articles thrown or placed by any person on or in any street, alley, sidewalk or other public place which in any way may cause or is liable to cause any injury or inconvenience or annoyance to the public within the town.

(25) A semi-trailer, defined as every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its road load rests upon or is carried by another vehicle, used as temporary or permanent stationary storage, that is located on public or private property.

§ 95.02 REPORTING OF NUISANCE.

It shall be the duty of all officers and employees of the Town to report the existence of nuisances as outlined in §95.01.

§ 95.03 INSPECTION OF PREMISES.

For this purpose, the Town Manager, Building Inspector, Code Enforcement Officer, or other employees designated by the Town Council shall be permitted to visit any parcel within the limits of the Town to observe from a public right of way, public utility or drainage easement to ascertain and discover any nuisance and to make examination thereof. For this purpose and upon written permission by the owner of the property being inspected or court order listing the same, may enter into or upon any building, lot, grounds or premises, within the limits of this Town to ascertain and discover any nuisances and to make examination thereof.

ABATEMENT PROCEDURES

§ 95.15 ABATEMENT OF NUISANCES.

(A) When a public nuisance is found to exist, the Town Manager, Building Inspector, Code Enforcement Officer, or other employees designated by the Town Council shall notify the property owner or persons known to have a substantial interest in the property to abate the conditions which are deemed to be a public nuisance under this subchapter.

(B) Notification to abate shall be issued according to applicable law. Notification shall state the nature of the nuisances, the penalty for neglect or refusal to abate the nuisance, and the period of time allowed to abate the nuisance.

(C) Whenever a nuisance is found to exist within the town, the Town Manager, Building Inspector, Code Enforcement Officer, or other employees designated by the Town Council shall give a minimum of five days, but not more than 60 days written notice to the owner or person known to have a substantial interest in the property.

(D) The notice to abate a nuisance issued under the provisions of this subchapter shall contain:

(1) An order to abate the nuisance or to request a hearing within a stated time, which shall be reasonable under the circumstances;

(2) The location of the nuisance, if the same is stationary;

(3) A description of what constitutes the nuisance;

(4) A statement of acts necessary to abate the nuisance;

(5) A statement that if the nuisance is not abated or corrected and no request for hearing is made within the prescribed time, the town will abate such nuisance and assess the costs thereof against such person.

(E) The notice to abate a nuisance shall be served as any other legal process may be served pursuant to law.

§ 95.16 FAILURE TO ABATE.

(A) The failure, neglect, or refusal by any owner to abate the nuisance as prescribed in the notice to abate given under this subchapter shall be considered a violation of this subchapter, and each subsequent day of noncompliance shall be considered a separate violation.

(B) Upon failure, neglect, or refusal of any party to comply with the notice to abate given under § 95.15, or whenever a nuisance exists which creates a safety or health hazard requiring immediate abatement in order to protect public safety or health, and after all persons known to have a substantial interest in the property where the nuisance exists have been given a reasonable opportunity to bring the property into compliance and have not done so, the town may abate the nuisance and bill the cost of abatement to the record property owner and to persons shown to have the exclusive possession of the property. In the event town employees are used to abate the nuisance, the hourly rate charged by the town shall be \$100 per hour per employee for the first violation and said rate shall increase by \$50 per hour per employee for all subsequent violations. In addition to the hourly rate, all costs involved with the disposal of any material removed from the property shall be assessed to the property owner. This hourly rate shall be adjusted from time to time by the Town Council by resolution in order to be assured that the costs of enforcement are completely paid for by the owner and not other taxpayers. Any and all costs incurred by the town in the abatement of a nuisance under the provisions of this subchapter shall constitute a lien against the property upon which the nuisance existed, which lien shall be filed, proved, and collected by certifying the costs of the abatement to the County Auditor as provided by law. In enforcing the provisions of this subchapter, the town shall also be entitled to collect reasonable attorney fees and court costs in addition to any other fines and penalties as provided by this section and by law.

(C) The costs established in division (B) above which shall be assessed to the property owner, are separate and distinct and shall be in addition to any penalties up to \$2,500, upon conviction of the Unsafe Building Commission.