

ORDINANCE NO.
ST. JOSEPH COUNTY PUBLIC NUISANCE ORDINANCE

WHEREAS, Indiana Code § 36-1-3-1 et seq. permits any unit in the State of Indiana to exercise any power or to perform any function necessary to the public interest in the context of its governmental or internal affairs, which is not prohibited by the Constitution of the United States or of the State of Indiana, or denied or pre-empted by any other law, or is not expressly granted by any other law to another governmental entity;

WHEREAS, the County Council of the County of St. Joseph, Indiana is the legislative body and is by law authorized to adopt ordinances for the protection of the public health, safety, and general welfare of its residents;

WHEREAS, Public Nuisances, when allowed to exist unregulated in unincorporated areas of St. Joseph County are unsightly, detrimental to property values, a fire hazard and a hazard to health and safety;

WHEREAS, the purpose of this Ordinance is to regulate and prohibit and require the abatement and/or removal of Public Nuisances on all parcels of real estate in unincorporated areas of St. Joseph County;

NOW, THEREFORE, BE IT ORDAINED by the County Council of the County of St. Joseph, Indiana, as follows:

Section 1. Title

This Ordinance and all ordinances supplemental or amendatory thereto shall be known as the "St. Joseph County Public Nuisance Ordinance" (hereinafter this "Ordinance").

Section 2. Definitions

A. "Administrative Review Officer" shall mean and refer to such person as duly designated by the Director, who shall not be involved in the enforcement of this Ordinance, and who shall review all applications for appeal under this Ordinance.

B. "County" shall mean and refer to the County of St. Joseph, State of Indiana.

C. "Department" shall mean and refer to the Department of Infrastructure, Planning & Growth of St. Joseph County.

D. "Director" shall mean and refer to the St. Joseph County Area Plan Commission Director and his or her Duly Authorized Representatives".

E. "Duly Authorized Representatives" shall mean and refer to staff or other departments designated by the Director

F. "Public Nuisance" shall mean any condition or action that is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property so as essentially to interfere with the comfortable enjoyment of life or property, as well as other conditions or actions that are otherwise known to the common law or to the statutes of the State of Indiana as a nuisance, and shall include but is not limited to the following:

1. litter;
2. boxes, appliances, furniture, household items, and items of a similar nature which have accumulated outside a storage structure; said nuisances do not include machinery, stock or inventory used (and in a condition capable of being used, i.e., not inoperable or disassembled) in conducting agricultural activities in a properly zoned area;
3. demolition remains;
4. accumulated garbage or trash;
5. automobile parts, used tires, or scrap metal;
6. structures defaced with paint or graffiti;
7. any waste water, filth, offal, garbage, rubbish, which is deposited, allowed or caused to be upon any public or private property;
8. the construction of, or the placement of any structure or materials within the drainage way of any right of way or platted easement that will prevent the natural flow of water and cause it to collect and pool upon any private or public property or in any way interfere with the regular maintenance of a regulated drain or urban drain including but not limited to retention/detention basins;
9. the placing or accumulating on or within any real or personal property, or the permitting of same, of any matter which attracts or may attract rodents, insects, domestic or wild animals in such a manner as to create a health hazard, unsanitary, or dangerous condition. This does not include a maintained compost pile, that is contained, placed in compliance with the accessory structure setbacks in the St. Joseph County Zoning Ordinance, and not emitting an odor or attract rodents;
10. trees, shrubbery, weeds, or other matter obstructing public ways, or causing visual barriers which create vehicular traffic or pedestrian safety hazards; or
11. the unauthorized placement of fences, signs, shrubbery or barriers within the county road right of ways.
- ~~12. Piles of wood, trees, parts of trees, and other brush which is located in the minimum front yard or in the buildable area of a lot located between the front line of the primary building and the minimum front yard located in the front yard set back (as defined in the St. Joseph County Zoning Ordinance). Brush piles which are in compliance with the IDNR guidelines for brush pile habitats as published by IDNR are not public nuisances under this Ordinance regardless of location.~~

G. "Public Nuisance Premises" shall mean the tract of real property on which a Public Nuisance is located.

H. "Substantial Property Interest" as used in this Ordinance shall mean any right in real property that may be affected in a substantial way by actions authorized by this Ordinance, including a fee interest, a life estate interest, a future interest, a mortgage interest, or an equitable interest of a contract purchaser, or shall otherwise refer to the definition of "substantial property interest" as set forth in Indiana Code 36-7-9-2, as amended or replaced from time to time, which is hereby incorporated by reference and made a part of this Ordinance.

I. "Zoning Administrator" shall mean and refer to the St. Joseph County Zoning Administrator and his or her Duly Authorized Representatives.

Section 3. Administration and Enforcement

The Department shall be the executive department that is authorized to administer the terms and provisions of this Ordinance. The Zoning Administrator shall enforce the terms and provisions of this Ordinance. The Department and the Zoning Administrator are hereby granted all powers reasonable and necessary for the performance of their responsibilities under this Ordinance.

Section 4. Enforcement Discretion

The Department shall have all rights and authorities as are provided under Indiana law as the executive department authorized to administer and enforce this Ordinance. It is hereby acknowledged, understood, and declared by the St. Joseph County Council that the Zoning Administrator is required to exercise and is vested with the authority to exercise his or her discretion and judgment in order to protect and preserve the public health, safety, and general welfare of the citizens of St. Joseph County, Indiana in administering and enforcing this Ordinance. The authority of the Zoning Administrator to issue or revoke, or fail or refuse to issue or revoke any notice, approval, order, or similar action under this Ordinance is hereby declared to be discretionary.

Section 5. Required Action

It is a violation of this Ordinance to have, maintain, or allow a Public Nuisance on any parcel of real estate in an unincorporated area of the County. All owners of parcels of real estate in unincorporated areas of the County are hereby required to abate and/or remove from such real estate all Public Nuisances created or existing thereon. If the Zoning Administrator determines after an inspection that a Public Nuisance exists, the Zoning Administrator may take action in accordance with the procedures set forth in this Ordinance to abate or remove such Public Nuisance.

Section 6. Violation Notice

If a Public Nuisance is determined to be present on a property, making it a Public Nuisance Premises, the Zoning Administrator shall give written notice to the landowner upon whose property such Public Nuisance is present, including the following information:

- A. the name of the person to whom the notice is issued;
- B. the legal description or address of the Public Nuisance premises that is the subject of the order;
- C. stating that such Public Nuisance is required to be removed and/or abated, and the specific actions required for such removal or abatement;

- D. the period of time in which the action is required to be accomplished or the Department to be contacted to propose a plan of action and expected timeline for Department staff approval, which approval shall not be unreasonably withheld;
- E. a reference to this Ordinance, and a statement that, if such landowner does not comply with the requirements of such Notice, the Department may cause such Public Nuisance to be abated and/or removed and that the abatement and removal costs thereof incurred by the County, plus any administrative costs, shall be paid by the landowner;
- F. a statement, indicating the obligation created by Section 10 of this Ordinance relating to notification of subsequent interest holders and the enforcement authority; and
- G. the name, address and telephone number of the Zoning Administrator and code enforcement staff;
- H. a statement that if the landowner fails to pay the removal costs for the Public Nuisance, plus ~~all~~ administrative costs, within ~~ten (10)~~ thirty (30) days after the Zoning Administrator serves the landowner with an invoice of the removal costs thereof, plus administrative costs, the amount claimed shall be placed on the tax duplicate against such property affected by the work, and the amount shall be collected as delinquent taxes are collected.

The notice must allow at least ten (10) days from the time when notice of the order is given to accomplish the required action.

If a landowner has been notified under the provisions of this Section and Section 9 of this Ordinance but has failed to comply with the requirements of this Ordinance within the time specified or agreed to between the landowner and Department staff, the landowner shall be deemed to have granted permission to the Department and/or its representatives to enter upon the landowner's property for the purpose of causing such Public Nuisance to be abated and/or removed.

Prior to the sending of official notice under this Section 9 for properties which have been identified for the first time as containing a Public Nuisance, the Department may place a hangtag on the door of the property where a Public Nuisance has been identified, to notify the landowner of the existence of a possible violation of this Ordinance. This hangtag notice shall not be considered the "Violation Notice" as described above and shall be merely informational to the landowner. For further enforcement, the Department must proceed to issue the Violation Notice as described above.

Section 7. Enforcement

In the event that the owner of a Public Nuisance Premises fails to perform the action required by an order issued under Section 6 of this Ordinance, the Zoning Administrator or St. Joseph County Attorney, may file a civil action in ~~a~~ the circuit court of St. Joseph County, Indiana located in Mishawaka, to seek damages caused by such Public Nuisance and the collection of any fines assessed pursuant to this Ordinance. Damages that the Zoning Administrator may seek to collect in the civil action shall include reimbursement for all costs incurred by the County to abate or remove a Public Nuisance including:

A. The actual cost of the work performed by the Department or other County personnel, or a private contractor hired by the Department, reasonable charges for the equipment used, repair costs for damage to equipment used, mileage costs incurred in driving to and from the subject property, disposal costs, and other related expenses, and/or the bid price of work accomplished by a contractor hired by the Department to perform work under court order;

B. Administrative costs incurred by the Department in abating or removing a Public Nuisance, including compensation for the time of the Zoning Administrator and Duly Authorized Representatives spent in enforcing this Ordinance, costs of sending notice under Section 6 of this Ordinance, postage charges, charges for office supplies incurred by the Director, reasonable attorney fees and court costs, and other related charges; and

C. Any fines assessed pursuant to this Ordinance..

~~All monies shall be made payable to and shall be deposited in the County Public Nuisance Fund. The County Public Nuisance Fund is established and perpetuated in the County operating budget.~~

Section 8. Inspection Warrants

If the owners or those in possession of a parcel of real estate in an unincorporated area of the County refuse inspection, the Zoning Administrator may obtain an inspection warrant from the St. Joseph County Circuit Court located in Mishawaka in order to determine if there is a Public Nuisance existing on the premises. The court shall issue the warrant subject to the following conditions:

A. The person seeking the warrant must establish that the premises to be searched or inspected is to be searched or inspected as part of a legally authorized program of inspection that naturally includes the premises, or that there is probable cause for belief that a condition, object, activity, or circumstance legally justifies a search or inspection of that premises.

B. An affidavit establishing one (1) of the grounds described in subsection 2(0) must be signed under oath or affirmation by the affiant.

The warrant is valid only if it:

A. is signed by the judge or the court and bears the date and hour of its issuance above that signature, with a notation that the warrant is valid for only forty-eight (48) hours after its issuance;

B. describes (either directly or by reference to the affidavit) the premises where the search or inspection is to occur so that the executor of the warrant and owner or the possessor of the premises can reasonably determine what premises the warrant authorizes an inspection of;

C. indicates the conditions, objects, activities, or circumstances that the inspection is intended to check or reveal; and

D. is attached to the affidavit required to be made in order to obtain the warrant.

A warrant issued under this Section 8 is valid for only forty-eight (48) hours after its issuance, must be personally served upon the owners or possessors of the premises, and- must be returned within seventy-two (72) hours.

Section 9. Notice

Violation Notices shall be adequate if given to the landowner of the property in person or sent by Certified U.S. mail, return receipt requested, postage prepaid, to the landowner at the address as listed on the real estate records of the St. Joseph County Auditor's office, or as otherwise provided in I.C. 1-1-7-1 or I.C. 36-7-10.1, as amended or replaced from time to time, which is hereby incorporated by reference and made a part of this Ordinance, or other applicable Indiana law. Date of service shall be the date of delivery if given in person or the date of mailing if given by Certified U.S. mail, postage prepaid.

Section 10. Transfers of Property

A person who has been issued and has received a violation notice relative to a Public Nuisance and has not abated or removed the Public Nuisance:

A. must supply full information regarding the violation notice to a person who takes or agrees to take a Substantial Property Interest in the Public Nuisance premises before transferring or agreeing to transfer that interest; and

B. must, within five (5) days after transferring or agreeing to transfer a Substantial Property Interest in the Public Nuisance premises, supply the Zoning Administrator with written copies of:

1. the full name, address, and telephone number of the person taking a Substantial Property Interest in the Public Nuisance premises; and
2. the legal instrument under which the transfer or agreement to transfer the Substantial Property Interest is accomplished.

If a judgment is obtained against the Department, Zoning Administrator, or other governmental entity for the failure of that entity to provide notice to persons holding an interest in the Public Nuisance premises in an action taken by the entity under this Ordinance, a person who failed to comply with this Section 10 is liable to the entity for the amount of the judgment if it can be shown that the entity's failure to give notice was a result of that person's failure to comply with the requirements of this Section 10.

Section 11 Penalty Provisions

A. ~~FinesRepeat Offender Penalty. Any person found to be in violation of this Ordinance shall be guilty of an ordinance violation and shall be subject to a civil penalty of up to Two Thousand Five Hundred Dollars (\$2,500.00) for each violation. Each day that a violation continues shall constitute a separate violation. Any failure to comply with any of the terms and provisions of this Ordinance shall constitute a violation. The assessment of a civil penalty shall in no way limit the operation of any other enforcement remedies provided elsewhere in this Ordinance. Should any property be subject to more than one abatement under this ordinance, said property shall be subject to a Repeat Offender Penalty as~~

outlined in Appendix: Schedule of Fines and Fees on a cumulative basis. Any penalty collected under this provision shall be applied to any abatement costs incurred under this Ordinance.

B. Expenses. The Department may recover reasonable attorney fees, court costs, and other expenses associated with the enforcement of this Ordinance from any person found to be in violation of this Ordinance.

C. Agreed Order. The Zoning Administrator, in the name of the Department, may enter into an agreed order which order may include the payment of a civil penalty and other expenses associated with the enforcement of this Ordinance by the Department.

D. Enforcement of Agreed Order. The Zoning Administrator, in the name of the Department, may file a complaint in the St. Joseph County Circuit Court located in Mishawaka seeking to enforce the terms of an agreed order.

E. Other Action. Nothing contained herein shall prevent the Department or Zoning Administrator from taking any other lawful action as is necessary to prevent or remedy any violation of this Ordinance.

Section 12. Appeals

Any person who receives an Order issued under this Ordinance, or is cited for a civil penalty for violation of this Ordinance, shall have the right to appeal such Order or citation to the Administrative Review Officer. Such appeal shall be made in writing, on a form determined by the Director, and must be submitted to the current office of the Zoning Administrator, as stated on the violation notice~~Director~~, within ten (10) days of the Order or citation being appealed. The appellant should attach all evidence they believe relevant to their appeal to the appeal form upon submittal, and describe in detail the reason(s) they believe the decision of the enforcing authority should be reversed. The Administrative Review Officer shall review the appellant's appeal and submitted documents, and the file provided by the Zoning Administrator relevant to the appeal. The Administrative Review Officer shall issue their decision in writing within thirty (30) days of receiving the appeal from the Director, upholding, reversing, or modifying the Order or citation at issue.

The appellant may appeal the decision of the Administrative Review Officer to the circuit court of St. Joseph County, Indiana located in Mishawaka, in the manner prescribed for appeals pursuant to Ind. Code § 36-1-6-9, and must be brought within sixty (60) days after the date on which the Administrative Review Officer issues their decision.

While an Order or citation is in the appeal process, all enforcement actions are stayed. This stay continues until the expiration of ten days after the last opportunity for appeal has expired.

Section 13. Appendix: Schedule of Fines and Fees is hereby amended to include:

1) First violation post abatement - \$100.00

2) Second violation post abatement - \$200.00

3) Third violation post abatement - \$500.00

Section 143. Construction and Effective Date

All ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed upon the effectiveness of this Ordinance.

In the event that any provision of this Ordinance is determined by a court of competent jurisdiction to be pre-empted by a state or federal law or regulation, the applicable provision shall automatically be deemed amended by eliminating the pre-empted provision and incorporating in its place the applicable provision of the pre-empting state or federal law or regulation.

Each provision of this Ordinance shall be construed as separate. If any term or provision of this Ordinance is determined to be invalid or unenforceable by a court of competent jurisdiction, the remaining terms and provisions of this Ordinance shall continue in full force and effect

The expressed repeal by this Ordinance and any implied repeal by this Ordinance of any other ordinance or part of any other ordinance does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this Ordinance. These rights, liabilities, and other proceedings are continued and penalties shall be imposed and enforced under the repealed ordinance as if this Ordinance had not been adopted.

This Ordinance shall be in full force and effect from and after its passage and adoption by the St. Joseph County Council, approval by the Board of Commissioners, and publication in accordance with the requirements of Indiana law.

Passed and adopted this _____ day of _____, 2022.

Member, St. Joseph County Council