

ORDINANCE NO. 070924

An Ordinance Amending McCordsville's Nuisance Laws

WHEREAS, the Town of McCordsville (the "Town") is a political subdivision existing under the provisions of Ind. Code § 36-5-1, *et. seq.*;

WHEREAS, the McCordsville Town Council (the "Council") is the fiscal body of the Town and is responsible for the adoption of and amendments to all local ordinances;

WHEREAS, on August 14, 2001, Council adopted Ordinance 071001A, adopting an unwholesome environmental conditions ordinance, which focuses on overgrown vegetation/weeds and unnecessary accumulations of trash or waste on public and private properties;

WHEREAS, that ordinance was amended on September 12, 2012, as Ordinance 091112. It has not been amended since;

WHEREAS, on December 11, 2007, Council adopted Ordinance 111307E, which prohibits the act of burning trash and leaves within Town limits and establishes such as a public nuisance. This ordinance has never been amended;

WHEREAS, the Council desires to amend Chapter 94 in its entirety to better clarify and expand what shall be deemed a nuisance in the Town of McCordsville and how such nuisance violations will be administratively and judicially addressed;

NOW, THEREFORE, be it ordained by the Town Council of the Town of McCordsville, Indiana, that Chapter 94 shall be amended as follows:

Section 1: New provisions added:

GENERAL PROVISIONS

DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

"CONSTRUCTION OPERATIONS." The construction, alteration, repair, extension, demolition or dismantling of buildings or structures, which shall include any work to the land necessary to prepare the project.

"ENFORCEMENT AUTHORITY." The Town of McCordsville's Planning and Building Department.

"HEARING AUTHORITY." The Town Council.

"LITTER." Includes any man-made or man-used waste, which, if deposited within the town otherwise than in a litter receptacle, tends to create a danger to public health, safety, and welfare

or tends to impair the environment or aesthetic well-being of the community. It shall include, but not be limited to, garbage, trash, refuse, debris, grass clippings or other lawn or garden waste, paper products, glass, metal, plastic or paper containers, motor vehicle parts, furniture, appliances, carcasses of dead animals, or other waste material of an unsightly, unsanitary, nauseous or offensive nature.

"NUISANCE." As defined in IC § 32-30-6-6, to-wit: whatever 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.

"OF RECORD." As recorded in the tax records of Hancock County.

"PERSON." An individual, a firm, labor organization, partnership, association, corporation, limited liability company, legal representative, trustee, trustee in bankruptcy, or receiver.

"PRIVATE PREMISES." Any and all land and/or structures upon that land not publicly owned.

"PUBLIC PLACE." Any and all land and/or structures upon that land publicly owned.

"SUBSTANTIAL PROPERTY INTEREST." Any right in real property that may be affected in a substantial way by actions authorized by this chapter, including a fee interest, a life estate interest, a future interest, a present possessory interest, or an equitable interest of a contract purchaser.

PROHIBITION.

No owner, occupant, tenant, or any person having a substantial property interest in any real or personal property within town limits, or any agent thereof, shall maintain, create, cause, place, deposit, leave, or permit a nuisance to remain on such property, or upon any public place abutting such real or personal property.

GENERAL NUISANCES DESCRIBED.

For purposes of this chapter, the following list includes, but is not limited to, conditions which constitute a nuisance:

- (1) Litter or accumulations of rubbish, trash, refuse, junk, or other abandoned materials, metals, and lumber.
- (2) Any form of leaf burning or wood burning, or the burning of trash, rubbish or garbage, on private or public property. This shall not include monitored or supervised recreational or ceremonial fires. Fires must be attended at all times until completely extinguished.
- (3) Fallen trees, removed or abandoned tree stumps, dead trees, cut brush, fallen or cut limbs except stacked firewood.
- (4) Dilapidated or deteriorated appliances, household items, furniture and tires stored outdoors.
- (5) Demolition remains.
- (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.
- (7) Automobile parts, disassembled automobiles, automobiles without engines, plumbing and piping materials and parts, scrap metal, unseaworthy or dilapidated boats, dilapidated, deteriorated, or nonoperable jet skis, snowmobiles, bicycles, trailers, or mopeds.

- (8) Structures defaced with paint, graffiti, or wording.
- (9) Emission of a significant amount of odor, dust, smoke, or other matter into the atmosphere which renders ordinary use and enjoyment of property in the vicinity uncomfortable or impossible.
- (10) Any waste water, filth, offal, dead animal or animal parts, garbage, rubbish, animal waste, human excrement, which is deposited, allowed or caused to be upon any public or private property.
- (11) Any water or any other substance which is caused or permitted to flow onto or be deposited upon any private or public way, except natural surface water drainage.
- (12) 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 in a pool on any private or public property.
- (13) Any real or personal property which is infected with contagious disease or is likely to cause an immediate health hazard.
- (14) Any real or personal property, used as a place of residence or habitation or for sleeping, that is maintained in such a way as to be dangerous or detrimental to life or health due to lack of or defects in water, drainage, heat, electricity, plumbing, ventilation or garbage and trash removal.
- (15) The storage of any explosive, combustible or other material which creates a safety or health hazard.
- (16) Trees, shrubbery, weeds, or other matter obstructing public ways, or causing visual barriers which create vehicular traffic or pedestrian safety hazards.
- (17) Grass, weeds, or other lawn vegetation which has attained a height of eight inches or more.
- (18) Accumulations of stagnant water.
- (19) Any real or personal property infested with insects, rats, vermin, or wild or domestic animals, to a degree that prevents the reasonable use and enjoyment of adjoining and surrounding properties or creates a health hazard or unsanitary or dangerous condition.
- (20) Basketball goals or other privately owned structures erected in, or infringing upon, any public place.
- (21) Fences and walls on commercial, residential or industrial properties that are not maintained to community standards, in a state of disrepair and/or a danger to the public.
- (22) Exterior lighting fixtures on commercial or industrial structures and/or lighting fixtures in the parking lot surrounding commercial or industrial structures that are broken, non-functioning, burned out and/or are insufficient in number or brightness to provide for the safety and security of employees or patrons of the commercial or industrial establishment.
- (23) Paint, siding, shingle, stucco, wood or any other exterior covering on commercial, residential or industrial structures that is chipping, flaking, missing, decayed, in disrepair, or detached from the exterior of the structure.
- (24) Offensive exterior lighting.

CONSTRUCTION NUISANCES DESCRIBED.

(1) Except as otherwise provided in this chapter, it shall be unlawful for any person to perform professional construction operations from 10:00 p.m. on Saturday through 7:00 a.m. on Monday. This shall include dropping off and picking up equipment at a construction site.

(2) It shall be unlawful for any person to perform construction operations on New Year's Day, January 1; Memorial Day, the last Monday in May; Labor Day, the first Monday in September; Thanksgiving Day, the fourth Thursday in November; and Christmas Day, December 25.

Exemptions.

(1) Construction operations, for which building permits have been issued or construction operations for which a permit is not required shall be exempt under the following conditions and with the following exceptions:

(a) Such operations that occur after 7:00 a.m. and before 10:00 p.m., except as otherwise provided in this section;

(b) Because of the loud and unusual sounds, and the ground vibrations associated with pile drivers, steam shovels, pneumatic hammers, and steam or diesel gasoline hoists, the operation of this equipment shall be exempt but only when it occurs between the hours of 7:00 a.m. and 8:00 p.m. or when allowed by special permit.

(c) In order to be exempt, all equipment used in such operations shall be operated with the manufacturer's mufflers and noise reducing equipment in use and in proper operating condition;

ENFORCEMENT PROCEDURE

AUTHORITY TO MAKE INSPECTIONS.

It is the duty of all officers and employees of the Town to report the existence of nuisances to the enforcement authority. The enforcement authority, or any other municipal employees so designated by Council, shall be authorized to visit, enter upon any lot, grounds, or premises within the limits of the Town for the purpose of ascertaining and discovering any nuisances and to make examination thereof. If an officer or employee is denied access to inspect inside a building or structure upon request, the officer or employee may seek an administrative warrant.

ABATEMENT NOTICE.

(A) Abatement notice. Where, upon inspection, reasonable cause is found to believe that a nuisance exists, the enforcement authority shall issue a written abatement notice.

(B) To whom notice is given. An abatement notice shall be served upon all known holders of substantial property interests in the real estate upon which the nuisance property is

alleged to exist. If the resident or occupant of the premises is not the owner of record of the real estate, the enforcement authority is authorized to serve the owner of record as shown in the Hancock County Recorder's Office in addition to other known holders of substantial property interests, including the resident or occupant.

(C) Content of notice. The abatement notice must contain:

- (1) The name of the person to whom the order is issued.
- (2) The common address and parcel number of the real estate where the nuisance is located which is the subject of the notice.
- (3) The action that the notice requires. The ordered action must be reasonably related to abatement of the condition(s) constituting the nuisance.
- (4) The period of time within which the action ordered is required to be accomplished, measured from the time when the abatement notice is served.
- (5) A statement that the order becomes final ten calendar days after notice is served, unless a hearing is requested in writing by a person holding a substantial property interest in the private premises upon which the nuisance is alleged to exist. The request for a hearing must be served upon the enforcement authority prior to the expiration of the aforementioned ten calendar day period.
- (6) A statement briefly indicating what action can be taken by the Town if there is non-compliance with the orders contained in the abatement notice.
- (7) The name, business address, and business telephone number of the enforcement authority.

(D) Manner of giving notice. Service of abatement notices shall be made by any of the following means:

- (1) Sending a copy of the notice by registered or certified mail to the residence or place of business or employment of the person to be notified, with return receipt requested.
- (2) Delivering a copy of the notice personally to the person to be notified.
- (3) Leaving a copy of the notice at the dwelling or usual place of abode of the person to be notified.
- (4) Posting a copy of the notice in a prominent place upon the premises where the nuisance is located.
- (5) If, after a reasonable effort, service cannot be obtained by any of the means described in subdivisions (D)(1) through (4), service may be made by publishing the notice in a newspaper of general circulation in the county in which the property subject to the notice is located. Publication shall be made one time.

(E) Effective date of notice. The date when notice is considered given is as follows:

- (1) If the notice is delivered personally or left at the dwelling or usual place of abode, notice is considered given on the day when the order or statement is delivered to the person or left at his dwelling or usual place of abode.
- (2) If the notice is mailed, notice is considered given on the date shown on the return receipt, or, if no date is shown, on the date when the return receipt is received by the Department of Building and Code Enforcement.
- (3) Notice by publication is considered given on the date of publication.

WHEN ABATEMENT NOTICE NOT REQUIRED.

Where, in the opinion of the enforcement authority, an emergency nuisance exists which creates a substantial and imminent health or safety hazard requiring immediate abatement in order to protect health and safety, the enforcement authority may abate the nuisance without the necessity of issuing an abatement notice as set out herein. The enforcement authority shall then present its actions to Council at the Council's next meeting following the abatement action.

HEARINGS.

(A) Any owner, tenant or occupant, or person holding a substantial property interest in private premises upon which a nuisance is alleged to exist who disputes the existence of such, or disputes the nature of the abatement action ordered in the abatement notice, may, within ten (10) calendar days of service of the abatement notice, serve upon the enforcement authority a written request for a hearing. The written request does not need to be in any particular form, but shall clearly indicate that a hearing is requested.

(B) Upon receipt of the written request for a hearing, the enforcement authority shall place the matter on the agenda of the Town Council for hearing. The Council shall function as the hearing authority to adjudicate the matter.

(C) The enforcement authority shall give written notice to the party requesting the hearing of the date and time of the hearing.

(D) At the hearing, which may be adjourned from time to time, it shall be the enforcement authority's burden to go forward with evidence sufficient to demonstrate that a nuisance exists, and that the actions required are reasonably calculated to abate the nuisance within a reasonable period of time. The party requesting the hearing shall have the right to dispute the existence of the nuisance, the reasonableness of the remedy, or the reasonableness of the time allowed for remedial action.

(E) At the hearing, both sides may present witnesses, elicit testimony, introduce physical evidence, cross-examine opposing witnesses or dispute evidence submitted by their hearing opponent. Both sides may present oral arguments. Both sides may be represented by counsel.

(F) All such hearings shall be open to the public.

(G) Upon conclusion of the presentation of evidence and oral argument, if any, Council shall deliberate and render a decision either confirming, amending, or rescinding the disputed content of the abatement notice. Council may also impose a fine in accordance with IC 36-1-3-8(a)(10)(B). If a penalty is imposed, Council's decision may be appealed to the circuit or superior courts of Hancock county within 60 days on which the order is entered. If no penalty is imposed, Council's decision is final.

(H) All time parameters set out in the abatement notice for completion of compliance actions shall be tolled, pending the outcome of the Council's decision. In cases where the actions of the enforcement authority are upheld, or are upheld as modified by the Council, it shall be the responsibility of the Council, in its decision, to establish time periods for completion of compliance activities held in abeyance during the hearing process.

COMPLIANCE WITH ABATEMENT NOTICE.

When a nuisance is abated to the satisfaction of the enforcement authority or as required by Council after hearing, no further fines or penalties will be imposed. The enforcement authority shall make written note of the compliance and the enforcement file shall be closed.

FAILURE TO COMPLY WITH ABATEMENT NOTICE.

Failure, neglect, or refusal by the person to comply with the abatement notice within the time period set out therein, or within any extended time periods agreed to by the enforcement authority, or as imposed by Council following a hearing, shall constitute a violation of this chapter and shall render the person upon whom the abatement notice was served liable to a fine as set by local ordinance. The record owner of the premises upon which the nuisance is found to exist, and the tenant or occupant, may be held jointly and severally liable for the payment of fines assessed under this chapter.

ALTERNATIVE ENFORCEMENT.

In lieu of an administrative hearing before the Town Council, the Town may file a civil action to enforce any violation of this chapter pursuant to IC 36-1-6-4 and IC 32-30-6-6.

ABATEMENT BY TOWN.

(A) In addition to fines imposed in accordance with IC 36-1-3-8(a)(10)(B), where abatement is not accomplished by the person(s) who received the abatement notice within the period of time permitted, the Town may enter onto the property and take appropriate action to bring the property into compliance. Continuous enforcement orders (as defined in IC 36-7-9-2) can be enforced and liens may be assessed without the need for additional notice.

(B) If the Town takes action to bring into compliance, the expenses incurred by the Town constitute a lien against the property. The lien attaches when notice of the lien is recorded in the Hancock County Recorder's office. The lien is superior to all other liens except liens for taxes, in an amount that does not exceed:

(1) ten thousand dollars (\$10,000) for real property that:

(A) contains one (1) or more occupied or unoccupied single or double family dwellings or the appurtenances or additions to those dwellings; or

(B) is unimproved; or

(2) twenty thousand dollars (\$20,000) for all other real property not described in subdivision (1).

(C) A bill issued under subsection (B) is delinquent if the owner of the real property fails to pay the bill within thirty (30) days after the date of the issuance of the bill.

(D) Whenever the Town determines it necessary, the Clerk-Treasurer shall prepare:

(1) a list of delinquent fees and penalties that are enforceable under this section, including:

(A) the name or names of the owner or owners of each lot or parcel of real property on which fees are delinquent;

(B) a description of the premises, as shown on the records of the county auditor; and

(C) the amount of the delinquent fees and the penalty; or

(2) an instrument for each lot or parcel of real property on which the fees are delinquent.

(D) The Clerk-Treasurer shall record a copy of each list or each instrument with the Hancock County recorder, who shall charge a fee for recording the list or instrument under the fee schedule established in IC 36-2-7-10.

(E) The amount of the lien shall be placed on the tax duplicate by the auditor. The total amount, including any accrued interest, shall be collected in the same manner as delinquent taxes are collected and shall be disbursed to the general fund of the municipal corporation.

Section 2: This Ordinance shall repeal and replace the current language in Chapter 94.

Section 3: This Ordinance shall be in effect October 15, 2024.

ADOPTED BY THE COUNCIL OF THE TOWN OF MCCORDSVILLE, INDIANA this
_____ day of _____, 2024.

MCCORDSVILLE TOWN COUNCIL

FOR:

AGAINST:

_____	Greg Brewer	_____
_____	Scott Jones	_____
_____	Dr. Bryan Burney	_____
_____	Dr. John Price	_____
_____	Chad Gooding	_____

ATTEST:

Stephanie Crider, Clerk-Treasurer