

Ordinance Number: 0911/2, 2012

**AN ORDINANCE AMENDING ORDINANCE 071001A REGARDING
UNWHOLESOME ENVIRONMENTAL CONDITION**

WHEREAS, the Town Council of the Town of McCordsville, Indiana, has learned that there are certain conditions that from time to time exist within the incorporated limits of the Town which are unwholesome, unhealthy, and constitute a nuisance; and

WHEREAS, the Town Council of the Town of McCordsville, Indiana has in place Ordinance 071001A which prescribes such conditions and sets forth a definition of what constitutes an unwholesome environment, the manner in which such an environment is to be rectified, and how such as Ordinance would be enforced; and

WHEREAS, the Town Council of the Town of McCordsville, Indiana believes that amending and updating Ordinance 071001A is in the best interest of the health, safety and welfare of the citizens of the Town of McCordsville, Indiana.

**NOW THEREFOR BE IT ORDAINED BY THE TOWN COUNCIL OF
McCORDSVILLE, INDIANA THAT ORDINANCE 071001A BE AMENDED AS
FOLLOWS:**

SECTION I

DEFINITIONS

DEBRIS. The remains of something broken down or destroyed, abandoned, discarded or in a state of disrepair.

DERELICT VEHICLE/VESSEL/EQUIPMENT/MACHINERY. Items left on a property, with or without lawful authority, and which appear to be disused or abandoned by reason of its age, appearance, mechanical condition, or where required by law to be licensed or registered, lacks the same.

JUNK. An old, unsightly, or deteriorated material of any kind, including but not limited to, metals, cloth, paper, trash, garbage, glass, plastics, rubber tires, waste, or wrecked, disabled, junked or abandoned motor vehicles, boats, motors, trailers, or other vehicles or any parts thereof.

NOXIOUS OR UNSIGHTLY WEEDS. Vegetation growing on any real estate, or easement appurtenant thereto that is abandoned, neglected, disregarded or not cut, mown, or otherwise removed and which has attained a height of eight (8) inches or more.

RUBBISH. Includes mixed fragments of any form such as trash, litter, refuse (organic or inorganic) and waste material.

RESPONSIBLE PARTY. The McCordsville Town Manager or his/her designee acting as the Office of Environmental Enforcement.

PRIVATE PROPERTY. Property owned by a property owner, as defined herein, within the Corporate boundaries of the Town of McCordsville.

PROPERTY OWNER. The person, firm or legal entity whose name appears on the current tax duplicate in the office of the Auditor of Hancock County, as the owner of such real estate.

PUBLIC PROPERTY. Property owned, leased or controlled by the Town of McCordsville.

PUBLIC RIGHT-OF-WAY. Land occupied or intended to be occupied by a street, alley, boulevard, road, or trail that is owned by the Town of McCordsville or another public agency.

SECTION II

ENFORCEMENT OFFICE ESTABLISHED

The McCordsville Town Manager or his/her designee, is authorized and directed to establish and maintain an office of environmental enforcement whose powers and duties shall include but not be limited to determining and causing to be abated any public nuisance which constitutes an "unwholesome environmental condition" as hereinafter defined and prosecution of violation of this ordinance.

SECTION III

RESPONSIBILITY OF GOVERNMENTAL AGENCIES FOR GOVERNMENTAL PROPERTY

Each department or agency of the United States, the State of Indiana, Hancock County and the Town of McCordsville shall regularly and adequately remove or cause to be removed from public property any public nuisance or "unwholesome environmental condition" as that term is hereinafter defined.

SECTION IV

RESPONSIBILITY OF OWNERS FOR PRIVATE PROPERTY

All owners, lessees or occupants, or other persons in control of any private property in the Town of McCordsville shall regularly and adequately remove or cause to be removed from such property any public nuisance or "unwholesome environmental condition" as that term is hereinafter defined.

SECTION V

WHAT CONSTITUTES UNWHOLESOME CONDITIONS

(A) An "unwholesome environmental condition" exists on private or public property whenever any vegetation growing on such property, or easement appurtenant thereto is abandoned, neglected, disregarded or not cut, mown, or otherwise removed and which has attained a height of eight (8) inches or more, or violates any valid law, ordinance or regulation of the State of Indiana, Hancock County, the Town of McCordsville, or any departments or agencies thereof.

(B) An "unwholesome environmental condition" also exists whenever any vegetation exists on private property in close proximity to any governmental 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, or is in violation of any law of the State of Indiana or any ordinance of the Town of McCordsville, or any regulation of any of its departments or agencies. Specifically, the owner, or person in control of any lot or parcel of land in the Town, upon which any tree, shrub, vine or plant may be standing adjacent to any public way, shall trim or cause to be trimmed either at the property line or to a clear height of at least eight (8) feet above the surface of such public way, all branches thereof which overhang any portion of such public way, or which obstruct or interfere with the passage of light from any street lighting system and shall not plant or maintain any thereof so close to any property line as to obstruct thereby the vision of travelers along the streets. The Town of McCordsville, or its contractual agent, may enter upon any such private premises to do such trimming, as it determines to be necessary, or to remove any such obstruction herein prohibited. Said owner shall remove from such tree, shrub, vine or plant, all dead, decayed, unsightly, broken or dangerous limbs and branches that overhang, or are close to the public way; and which any such tree, shrub, vine or plant is dead, the owner shall completely remove the same.

(C) An "unwholesome environmental condition" exists whenever any private property or public property, right-of-way, or easement is abandoned, neglected or disregarded so as to permit the same to become a health hazard or nuisance, with an accumulation of rubbish or waste thereon, including but not limited to wastepaper, rags, cans, bottles, boxes, lumber, metal, garbage, disused or inoperable motor vehicles, trailers

or any other machinery, appliances or furniture thereon, unless specifically authorized under existing laws and regulations.

SECTION VI

NUISANCE DECLARED, REMEDIES

Any “unwholesome environmental condition” is hereby declared a public nuisance and the Town of McCordsville may proceed against such nuisance in accordance with the remedies provided in this Ordinance, by initiation of a civil action in any court of competent jurisdiction, or by pursuance of any other remedy authorized by law.

SECTION VII

RESPONSIBILITY FOR CAUSING ABATEMENT

The McCordsville Town Manager or his/her designee or designated agent acting as the responsible party, upon determining the existence of an “unwholesome environmental condition,” shall cause appropriate action to be taken for the abatement of such condition.

SECTION VIII

NOTICE OF VIOLATION

In the event any owner, lessee, occupant, or other person in control of real estate located within the geographical limits of the Town of McCordsville fails to perform the duties set forth herein, the Town Manager or his/her designee, shall prepare and forward to the property owner(s) a written notice calling for the abatement of the “unwholesome environmental condition” within ten (10) days of the date of the notice. The notice of violation shall be served upon the property owner by certified mail or by the McCordsville Police Department. The notice shall state the nature of the alleged “unwholesome environmental condition”, and the action deemed necessary to correct the condition.

Once the initial notice has been provided, a continuous abatement notice may be posted at the property at the time of abatement instead of by certified mail or equivalent service as required under this Section. A continuous abatement notice serves as notice to the real property owner that each subsequent violation during the same year for which the initial notice of the violation was provided may be abated by the Town of McCordsville or its contractors.

SECTION IX

FAILURE TO ABATE AFTER NOTICE

(A) From the date of the notice of violation is mailed or the date the notice of violation is served by an officer of the McCordsville Police Department if the owner of the property in violation lives within the corporate limits of the Town of McCordsville, Indiana, the property owner has ten (10) days to abate the violation. After five (5) days following the ten (10) days given to abate the violation, the Town Manager or his/her designee will perform a site inspection. If the property owner has abated the violation, the Town Manager or his/her designee will document via photography that the property owner has come into compliance, and the violation will be closed. If the property owner fails to abate the violation, the Town Manager or his/her designee will document that the property is in noncompliance with the notice of violation, as well as in violation of this ordinance. The Town Manager or his/her designee shall maintain before and after photographs. The property owner can request an additional ten (10) days to abate the violation by contacting the Town Manager's office.

(B) Within ten (10) days after the Town of McCordsville through the Office of Environmental Enforcement, has abated the "unwholesome environmental condition," the Town Manager or his/her designee shall mail, via certified mail, return receipt requested, an invoice to the property owner reflecting the total cost incurred by the Town of McCordsville in abating the "unwholesome environmental condition". The invoice will also include a fine in the amount of \$250 for violating the ordinance. Within ten (10) days of the date the invoice is mailed, the property owner shall:

(1) Pay to the Town of McCordsville all amounts owed as reflected in the invoice; or

(2) File a written appeal to the Town Manager setting forth the address of the property; the name of the property owner; the basis for the appeal and any documentation supporting the appeal. Upon appeal, the Town Manager shall determine whether the property owner is liable for the violation or the invoice amount. The Town Manager can approve or deny the appeal administratively or refer the matter to the Town Council. If found liable, the property owner shall have ten (10) days from the date that the determination is rendered to pay to the Town of McCordsville the invoice amount.

(3) The failure of any person, officer or agent of a corporation or other entity in charge or control of said property to remove any "unwholesome environmental condition" may be fined a sum not to exceed Two Thousand Five Hundred Dollars (\$2,500.00) plus reasonable attorney's fees and other costs associated with the enforcement of the provisions of this Ordinance.

SECTION X

TAX LIEN

From and after the effective date of the first performance by the responsible party of any act or service for any owner or owners in connection with the enforcement of this Section, the Town of McCordsville shall have a lien upon the offending private property to the full extent of the value of the act or acts performed, or the services rendered or both, in accordance with the fee schedule found in Ordinance #011111. Such liens shall be perfected in the manner following:

(A) By the adoption by the Town Council at any regular or special meeting thereof of an assessment resolution which shall give the name of the owner or owners, a description of the offending private property and the amount of the charges being assessed; and

(B) The certification of such assessment resolution to the Auditor of Hancock County who by special assessment shall cause the amount thereof to be placed on a tax duplicate for the offending private property subject to collection as in the nature of an additional or supplemental real property law.

(C) Contemporaneously with certification of the assessment resolution to the County Auditor, the responsible party may additionally elect to render a written statement of the amount due to each offending owner.

SECTION XI

This Ordinance shall remain in full force and effect from and after its passage in due publication and posting of said Ordinance in three (3) public places within the Town of McCordsville, Indiana.


SECTION XII


Introduced and filed on the 11 day of Sept., 2012. A motion to consider on first reading on the day of introduction was offered and sustained by a vote of 5 in favor and 0 opposed.


Duly ordained and passed this 11 day of Sept., 2012 by the Town of McCordsville, Hancock County, Indiana, having been passed by a vote of 5 in favor and 0 opposed.

Town Council of the Town of McCordsville, Indiana

Voting Affirmative


Brent Barnes – Council President


Larry Longman – Council Member


Maxwell Meise – Council Member


Thomas Strayer – Council Member


Barry Wood – Council Member

ATTEST:

Catherine C. Gardner, Clerk-Treasurer
Town of McCordsville, Indiana

Voting Opposed

Brent Barnes – Council President

Larry Longman – Council Member

Maxwell Meise – Council Member

Thomas Strayer – Council Member

Barry Wood – Council Member