

Ordinance Number 2011-__3__

**AN ORDINANCE PROHIBITING THE MAINTAINING
OF A PUBLIC NUISANCE ON ANY PUBLIC
OR PRIVATE PROPERTY WITHIN THE LIMITS OF
THE TOWN OF BURLINGTON**

WHEREAS, the Town of Burlington, has an interest in maintaining the health, safety and welfare of its citizens; and,

WHEREAS, the Town Council has the authority under I.C. 36-8-2-4 to regulate acts that might endanger the public health, safety and welfare of its citizens;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BURLINGTON, INDIANA, as follows:

SECTION I

Ordinance No. _____ titles "Public Nuisance" is hereby repealed.

SECTION II

Definitions

The following definitions shall apply unless the context clearly indicates or requires a different meaning.

Enforcement Authority.

The President of the Burlington Town Council and its agents or appointed representatives.

Litter.

Includes any man-made –used waste, which, if deposited within the Town otherwise than in a litter receptacle, ends to create a danger to public health, safety, and welfare or tends to impair the environment or aesthetic well-being of the community. Litter 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 vehicles parts, furniture, appliances, carcasses of dead animals, or other waste material of an unsightly, unsanitary, nauseous or offensive nature.

Nuisance.

Defined as set out in I.C. 34-19-1-1, 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.

Obstruction.

No person, corporation or sole proprietorship shall obstruct or endanger, or permit anything to obstruct or endanger the free passage or proper use by the public of any street, sidewalk, alley, or public place, except as may be permitted by this code, however, goods, wares, and merchandise may be placed on sidewalks for such reasonable time as may be necessary for loading and unloading them if they are removed within 24 hours.

Of Record.

Recorded in the records of the recorder of Carroll County, Indiana, or in the records of the Auditor of Carroll County, Indiana.

Public Place.

Any and all streets, curbs, gutters, sidewalks, and all public parks, lakes, spaces, publicly owned rights-of-way, grounds, or buildings within the corporate limits of the Town, or owned by the Town.

Private Premises.

All property, including, but not limited to, vacant land or any land upon which is located one or more buildings or other structures designated or used for residential, commercial, business, industrial, institutional, or religious purposes, together with any yard, grounds, walks, driveways, fences, porches, or other structures or improvements appurtenant to the land, except any public place.

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 present possessory interest, or an equitable interest of a contract purchaser.

Prohibition.

No citizen, corporation, partnership, sole proprietorship or any owner, occupant, tenant, or any person having a substantial property interest in any real or personal property within the Town limits, or any agent thereof, shall maintain, create, cause, place, deposit, leave, or permit a nuisance to remain on property within the Town, whether public or private.

Nuisances Described.

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

1. Litter
2. Accumulations of weeds, rubbish, trash, refuse, junk, or other abandoned materials, metals and lumber.

3. Fallen trees, stumps, dead trees, cut brush, fallen or cut limbs except stacked firewood.
4. Boxes, appliances, household items and tires.
5. Demolition remains.
6. Open excavations, uncovered or improperly covered holes, whether lines or unlined, and dirt piles on any open or unfenced real property within the Town, unless the dirt will be utilized in the future on the property in question.
7. Automobile parts, unlicensed and/or inoperable vehicles, disassembled automobiles, automobiles without engines, plumbing and piping materials and parts, scrap metal, unseaworthy or dilapidated boats, dilapidated, deteriorated, or non-operable jet skis, snowmobiles, bicycles, trailers, mopeds, or anything alike.
8. Structures defaced with paint, graffiti, or wording.
9. Any waste water, filth, offal, garbage, rubbish, animal waste, human excrement, which is deposited, allowed or caused to be upon any public or private property.
10. 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 drainage.
11. Any dead animal or animal parts.
12. The erection of dam or any other obstruction by a private party which prevents the natural flow of water and causes it to collect and pool upon any public property.
13. Any real or personal property which is infected with contagious disease or is likely to cause an immediate health hazard.
14. The placing or accumulating on or within any real or personal property or the permitting of the same, or any matter which attracts rodents, insects, domestic or wild animals in such a manner as to create a health hazard or unsanitary or dangerous condition.
15. Any real or personal property, used as a place or residence or habitation or for sleeping that 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.
16. The storage of any explosive, combustible or other material which creates a safety or health hazard.
17. Trees, shrubbery, weeds, or other matter obstructing public ways, or causing visual barriers which create vehicular traffic or pedestrian safety hazards.

18. Trash or garbage containers left upon the sidewalk, the area between a street and a sidewalk or the front or side yard, or any public place, except as permitted by ordinance for trash and garbage collection purposes on regular collection days. Provided that, in those cases where it is demonstrated to the satisfaction of the enforcement authority that there is no physical possibility of locating trash containers at a site other than in one of the locations prohibited under this paragraph, the enforcement authority is authorized to issue written variances from this section upon such terms and conditions as the enforcement authority deems appropriate. Such variance may not allow permanent placement of such containers on a public place. Records shall be maintained of all such variances issued, and the reasons justifying the issuance thereof.
19. Trash or garbage strewn upon the ground in the vicinity of trash or garbage containers unless enclosed in containers or bags as authorized by ordinance on regular collection days.
20. Any furniture not originally designed or manufactured solely for outdoor use, or furniture which was originally designed or manufactured for outdoor use, which is now dilapidated or deteriorated.
21. Accumulations of stagnant water.
22. 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.
23. Basketball goals or other privately owned structures erected in, or infringing upon, any public place, or right-of-way, which are deemed to create a safety hazard to the public.

SECTION III

Enforcement Procedure

Authority to Make Inspections.

It is made the duty of the Council Members and Town employees to report the existence of nuisances to the enforcement authority. The enforcement authority, or its representative, shall be authorized to visit, enter into or upon the building, lot, grounds, or premises within the limits of the Town for the purpose of ascertaining and discovering any nuisances to make examination thereof,

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. Abatement notices shall be served upon any citizen, corporation, partnership or sole proprietorship who allegedly created the nuisance or all known holders of substantial property interests in the real estate upon which the nuisance 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 records of the Auditor of Carroll County 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, corporation, partnership or sole proprietorship to which the order is issued.
 2. The legal description or address of the real estate where the nuisance is located which is the subject of the notice, if applicable.
 3. The action that the notice requires. The ordered action must be reasonably related to abatement of the conditions 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. The time allowed must be a sufficient amount of time, of at least 48 hours from the time the abatement notice is served, to accomplish the required action. If the notice allows more than 30 days accomplishing the action, the notice may require that a substantial beginning be made in accomplishing the action within the initial 30 day period following service of the notice.
 5. A statement that the order becomes final ten calendar days after notice is served, unless a hearing is requested in writing by the citizen, corporation, partnership or sole proprietorship, the tenant or occupant, or 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 business address of a corporation, partnership or sole proprietorship or the residence or place of business or employment of the person, to be notified, with a return receipt requested.
2. Delivering a copy of the notice personally to the person, corporation, partnership or sole proprietorship to be notified.
3. Leaving a copy of the notice at the business address of a corporation, partnership, or sole proprietorship or 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 1-4, 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 business office or dwelling or usual place of abode, notice is considered given on the day when the order or statement is delivered to the corporation, partnership or sole proprietorship or left at a person's dwelling or usual place of abode.
2. If the notice is mailed, notice is considered given on the date shown the return receipt, or, if no date is shown, on the date when the return receipt is received by the Burlington Town Hall.

3. Notice by publication is considered given on the date of publication.

SECTION IV

When Abatement Notice Not Required

Where, in the opinion of the enforcement authority, a 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, upon prior approval by the Town Council President, shall abate the nuisance without the necessity of issuing an abatement notice as set out in Section III A-E.

SECTION V

Hearings

- A. Any person, corporation, partnership, sole proprietorship or 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 a nuisance, or disputes the nature of the abatement action ordered in the abatement notice, may, within ten calendar days of service of the abatement notice, serve upon the enforcement authority a written request for hearing. The written request does not need to be in any particular form, but shall clearly indicate that a hearing is requested, and shall set out the nature of the disagreement with the content of the abatement notice.
- B. Upon receipt of the written request for a hearing, the enforcement authority shall place the matter before the Burlington Town Council.
- C. The enforcement authority shall give written notice to the party requesting the hearing of the date and time of the hearing. Such notice shall be given no less than five calendar days prior to the date set for the hearing.
- D. At the hearing, which may be adjourned from time to time, it shall be the Town'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. The party requesting the hearing may propose alternative

remedies or time period for remedial action, or alternate remediation plans.

- 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 be represented by counsel.
- F. All such hearings shall be open to the public pursuant to Indiana statutes on open meetings.
- G. Upon conclusion of the presentation of evidence and oral argument, if any, the Council shall deliberate and render a decision confirming, amending or rescinding the disputed content of the abatement notice. The decision of the Council shall be 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.

SECTION VI

Compliance with Abatement Notice

It being the intent of this chapter to promote the abatement of nuisances within the Town of Burlington, in those instances where the nuisance is abated to the satisfaction of the enforcement authority as required in the abatement notice, or as required by the Town Council after hearing, and within the time periods after the hearing, ordered by the Town Council, 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.

SECTION VII

Failure to Comply With Abatement Notice

Failure, neglect, or refusal by a person, corporation, partnership, sole proprietorship or the record owner or his agent, or the tenant or occupant, to comply with the orders set out in the abatement notice within the time periods set out therein, or within any extended time periods agreed to by the enforcement authority, shall constitute a violation of this chapter and shall render the party upon whom the abatement notice was served liable to a fine as set forth in Section IV. Each day's failure, neglect or refusal

to abate the nuisance during the time period allowed for compliance shall constitute a separate offense under this chapter. 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.

SECTION VIII **Abatement by Town**

A. In addition to fines imposed under Section IX, in non-emergency situations where abatement is not accomplished immediately by the Town, failure, neglect, or refusal of any party to abate a nuisance required by the abatement notice shall authorize the enforcement authority to obtain the permission of the Town Council to abate the nuisance as set out in the abatement notice. Where such permission is sought, the enforcement authority shall file a copy of the abatement notice with the Recorder of Carroll County, Indiana, to give constructive notice to subsequent purchasers that the real estate is subject to the costs associated with the abatement, if applicable. Work may be accomplished by Town employees if the work is within their capacity to accomplish, or the work may be advertised for public bid and awarded to the lowest responsible and responsive bidder. An accurate accounting shall be kept of all costs incurred in abating the nuisance. Upon completion of the abatement, a statement for costs incurred shall be forwarded to the person, corporation, partnership, sole proprietorship or to record owner by certified mail. Should such costs remain unpaid ten calendar days after receipt by the person, corporation, partnership, sole proprietorship or owner of record, or upon return of the certified mail as undeliverable, appropriate legal action may be taken to compel payment of costs incurred. Any judgment for costs obtained shall be filed as a judgment lien against the real estate upon which the nuisance was abated, if applicable.

B. In the alternative, where there has been non-compliance with the abatement notice, the Town is also authorized to seek equitable relief in a court of competent jurisdiction to compel compliance with the orders set out in the abatement notice.

SECTION IX **Penalty**

In addition to any costs imposed under this chapter, any person, corporation, partnership, sole proprietorship or owner, occupant or tenant of

real estate who is found to have violated this chapter, or willfully or negligently failed to comply with any provision of this chapter or with any orders issued hereunder, shall be fined not less than \$100, nor more than \$1,000 for each offense. Each day a violation shall occur or continue shall be deemed a separate and distinct offense. Citations for violations of this chapter may be issued by the enforcement authority or by the Town Marshall or a deputy. The Uniform Traffic Citation may be utilized for the purpose of evidencing violation of this chapter. Enforcement shall be in effect by the filing of a civil suit seeking judgment in the amount of the fine imposed, plus court costs.

ADOPTED by the Town Council of the Town of Burlington, Indiana, this 9th day of August, 2011.

Councilman:

Stan Moore

Teddy Huffer

Joseph Armstrong

ATTEST:

Christy Shepherd, Clerk-Treasurer