

AN ORDINANCE AMENDING CHAPTER 100:
NUISANCES OF THE CITY OF FORT WAYNE CODE OF
ORDINANCES.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE
CITY OF FORT WAYNE, INDIANA:

SECTION 1. That CHAPTER 100: NUISANCES of the City of Fort
Wayne, Indiana, Code of Ordinances of be amended as follows:

AMEND SECTION 100.16 DEFINITIONS – GOVERNMENTAL PROPERTY

GOVERNMENTAL PROPERTY. All real estate within the City which is owned, leased, controlled or occupied by the United States, the state, or any political subdivision thereof, excluding however, areas such as interior fields, river bank properties, wooded lots that are maintained as natural sites by such political entity and all areas within public rights-of-way located between the curb or edge of the public street, roadway, highway, or alley and the adjacent Private Property.

AMEND SECTION 100.16 DEFINITIONS – INSPECTOR

INSPECTOR. An employee of Neighborhood Code Compliance or any other City department, so designated by the Mayor who cites City ordinance violations in order to enforce the provisions of this chapter.

AMEND SECTION 100.16 DEFINITIONS – PRIVATE PROPERTY

PRIVATE PROPERTY. All real estate within the City except governmental property, including all real estate within Right-of-Way.

ADD NEW DEFINITION IN SECTION 100.16 DEFINITIONS

RIGHT-OF-WAY. A general term denoting real estate acquired for or devoted to construction of a highway, road or street that will include the travelled way, shoulders, roadsides, auxiliary lanes, medians, border areas, park strips, sidewalks, curbs, gutters, and frontage roads. This can also include but not limited to "paper streets" and "paper alleys," which have been platted by the original development but not improved.

SECTION 2. That this Ordinance is in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

Malak Heiny, City Attorney

CHAPTER 100: NUISANCES

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GENERAL PROVISIONS

§ 100.01 MAINTAINING CONDITIONS CONSTITUTING NUISANCE.

It shall be unlawful and it shall be a nuisance for any person to erect, construct, cause, permit, keep or maintain within the limits of the City anything whatsoever that is injurious to health or indecent or offensive to the senses or an obstruction to the free use of property and any person maintaining any nuisance as set forth in this section is declared to be the author and maintainer of a nuisance.

('74 Code, § 14-5) (Am. Ord. G-19-23, passed 7-11-23) Penalty, see § [100.99](#)

WEEDS AND OTHER ENVIRONMENTAL NUISANCES

§ 100.15 PURPOSE AND INTENT.

It is hereby declared to be the purpose of this chapter to protect the public safety, health and welfare and enhance the environment of the people of the City by making it unlawful to allow an environmental public nuisance to exist.

('74 Code, § 32-1) (Ord. G-09- 88, passed 5-24-88; Am. Ord. G- 06-92, passed 2-20-92; Am. Ord. G-19-23, passed 7-11-23)

§ 100.16 DEFINITIONS.

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

ALLEY. A right-of-way other than a street, road, crosswalk or easement, designed for the special accommodation of the property it reaches.

AUTHORIZED EMPLOYEE. An individual designated to make environmental public nuisance inspections, by the Department of Neighborhood Code Compliance or the head of any governmental department of the City, which department has been designated by the Mayor to enforce this chapter.

CITY. The City of Fort Wayne.

CONTRACTOR. A person, company, or other entity who enters into a contract, or is directed to provide materials and labor to perform a service or do a job as requested by Neighborhood Code Compliance or any other City department.

ENVIRONMENTAL PUBLIC NUISANCE.

(1) Any growth of weeds, grass or other rank vegetation on private or governmental property which is neglected, disregarded or not cut, mown, or otherwise removed and/or which has attained a height of nine inches or more.

(2) Any accumulation of dead weeds, grass or brush on private or governmental property.

(3) Any poison ivy, ragweed or other poisonous plant, or plants detrimental to health, growing on any private or governmental property.

(4) Property which has been allowed to become a health or safety hazard, or which has accumulated litter or waste products, unless specifically authorized under existing laws and regulations.

EXCLUDED PROPERTY.

(1) All land which is cultivated for gross profit in compliance with the Fort Wayne Zoning Ordinance.

(2) A natural or developed forest which does not create an unusual threat to health or safety for adjacent landowners.

(3) Vacant, open, or undeveloped lands or fields which are located more than 300 feet from a property within commercial, shopping center, manufactured housing, or industrial zoning districts.

(4) Vacant, open, or undeveloped property, or any part thereof, which is located more than 150 feet from structure within a residential zoning district, and which is not located within a front yard or side yard directly abutting a public street.

GOVERNMENTAL PROPERTY. All real estate within the City which is owned, leased, controlled or occupied by the United States, the state, or any political subdivision thereof, excluding however, areas such as interior fields, river bank properties, wooded lots that are maintained as natural sites by such political entity and all areas within public rights-of-way located between the curb or edge of a public sidewalk and the curb of the public street, roadway, highway, or alley and the adjacent Private Property, directly associated with said public street, roadway, highway or alley.

INSPECTOR. An employee of Neighborhood Code Compliance or any other City department, so designated by the Mayor who cites City ordinance violations in order to enforce the provisions of this chapter.

OWNER. The word, **OWNER**, shall be presumed to be any one or more of the following:

- (1) The owner or owners in fee simple of a parcel of real estate including the life tenant or tenants if any; or
- (2) The record owner or owners as reflected by the most current records in the township assessors' office of the township in which the real estate is located; or
- (3) The purchaser or purchasers of such real estate under any contract for the conditional sale thereof.

PRIVATE PROPERTY. All real estate within the City except governmental property, including all real estate within Right-of-Way. All real estate within public rights-of-way located between a public sidewalk and the curb of the public street, roadway, highway, or alley directly associated with said public street, roadway, highway or alley.

RIGHT-OF-WAY. A general term denoting real estate acquired for or devoted to construction of a highway, road or street that will include the travelled way, shoulders, roadsides, auxiliary lanes, medians, border areas, park strips, sidewalks, curbs, gutters, and frontage roads. This can also include but not limited to "paper streets" and "paper alleys," which have been platted by the original development but not improved.

TRAFFIC HAZARD. Any environmental public nuisance that is potentially dangerous to the existing traffic at an intersection in question, as it may block or prohibit the view of any oncoming traffic. This includes traffic hazards which might be found in alleys. That would be an environmental public nuisance that either impedes the flow of traffic or pedestrians in the alley or creates a dangerous condition to traffic in the alley. This vegetation will be deemed to impede traffic when it grows into the alley beyond the utility poles. If the Inspector finds a violation pursuant to such definition of traffic hazard, he or she shall find it necessary to waive the five day grace period and abate the problem as soon as possible.

WEEDS OR OTHER RANK VEGETATION. Includes the following:

- (1) Canada thistle (*Cirsium arvense*);
- (2) Johnson grass and *Sorghum alumum* (*Sorghum halepense*);

- (3) Bur cucumber (*Sicyos angulatus*);
- (4) Shattercane (*Sorghum bicolor*);
- (5) Purple loosestrife;
- (6) Multiflora rose;
- (7) Garlic Mustard;
- (8) Ragweed;

(9) All other plants which are poisonous or detrimental to human health or which may be determined to be noxious by the Indiana legislature or by rule of the Indiana Department of Natural Resources or Indiana Department of Agriculture; and

- (10) Grass in excess of nine inches tall excluding ornamental grasses.

('74 Code, § 32-2) (Ord. G-09-88, passed 5-24-88; Am. Ord. G- 06-92, passed 2-20-92; Am. Ord. G-11-02, passed 4-23-02; Am. Ord. G-19-23, passed 7-11-23)

§ 100.17 APPLICATION OF CHAPTER.

(A) Each department or agency of the United States, the State of Indiana, or any other political subdivision thereof, shall be required to keep governmental property free from environmental public nuisances.

(B) Each owner of private property shall be required to keep that private property free from environmental public nuisances.

('74 Code, § 32-2) (Ord. G-09-88, passed 5-24-88; Am. Ord. G-06-92, passed 2-20-92; Am. Ord. G-19-23, passed 7-11-23) Penalty, see § [100.99](#)

§ 100.18 PROHIBITED ACTIVITY.

It shall be unlawful for any owner of private property or governmental property to allow an environmental public nuisance to exist on that property, except on excluded property.

('74 Code, § 32-4) (Ord. G-09- 88, passed 5-24-88; Am. Ord. G- 06-92, passed 2-20-92; Am. Ord. G-19-23, passed 7-11-23) Penalty, see § [100.99](#)

§ 100.19 DETERMINATION OF VIOLATION.

(A) *Publication of notice.* In lieu of the notice required by § [100.19](#)(D), the City, through the Department of Neighborhood Code Compliance or any other City Department, on three separate occasions may publish a notice in the newspaper of general circulation in the City, that the violation will be remedied by the City and the owner of the property charged with the costs under the provisions of § [100.19](#)(D). The publication shall contain all the information required of the "Notice to Abate." The City may direct the Contractor to cut weeds as many times as is necessary and charge the actual cost to the property owner.

(B) *Complaint.* Violations under this chapter may be cited by any department of the City which either receives a complaint or identifies a violation regarding an environmental public nuisance on any property within the City, and if needed they may forward that complaint to the Department of Neighborhood Code Compliance.

(C) *Assignment of complaint.* The office of Neighborhood Code Compliance shall thereafter forward the complaint to the Inspector.

(D) *Notice to abate.* In lieu of the publication of notice, when a complaint addresses private property, the Inspector, through the Department of Neighborhood Code Compliance shall serve a Notice to Abate to the owner of the property in question granting that owner a minimum of five (5) calendar days in which to remove the environmental nuisance. This notice shall be served by United States first class mail to the owner, or by a "notice" placard conspicuously posted on the property which contains the following information:

- (1) The address or parcel number of the property,
- (2) The date of the notice,
- (3) The address and the telephone number of the Department of Neighborhood Code Compliance,
- (4) A warning that if the environmental public nuisance is not removed within five calendar days after posting, the City will direct the Contractor to abate the nuisance and seek recovery of the costs involved in the removal of the nuisance.
- (5) A short and plain statement of the owner's or occupant's right to object to the notice and the manner and time for making such objection.

Neighborhood Code Compliance, after posting a notice to abate, as a courtesy may serve to the owner of the subject property a copy of the notice by regular United States first class mail. Failure to give such written notice shall not constitute a defense to any action to enforce the provisions of § [100.18](#).

(E) *Inspection.* Following the expiration of the notice to abate, a Contractor shall visually inspect the property to determine whether an environmental public nuisance exists. If an environmental public nuisance exists, immediate action shall be taken to abate that nuisance in accordance with this chapter.

(F) *Abatement by City on governmental property.* Where the complaint addresses governmental property, and it is determined by the Inspector that a violation exists and threatens the health and safety of the people of the City, the Inspector may direct the City to immediately enter upon the premises and remove the environmental public nuisance.

('74 Code, § 32-5) (Ord. G-09- 88, passed 5-24-88; Am. Ord. G- 06-92, passed 2-20-92; Am. Ord. G-11-02, passed 4-23-02; Am. Ord. G-19-23, passed 7-11-23) Penalty, see § [100.99](#)

§ 100.20 ENFORCEMENT.

(A) *Citation for violation.* If the Inspector finds that an environmental public nuisance exists on private property and has not been abated as directed in the written notice to abate, or § 100.19(D), that Inspector may cause a citation for violation of City ordinance to be issued to the offending property owner.

(B) *Abatement by City on private property.* In addition to the issuance of a citation for violation under division (A) of this section, the Inspector, in the name of the Controller of the City, may issue a request to the City to abate the environmental public nuisance, and shall thereafter furnish the Controller with a statement of the actual cost involved in the removal of the nuisance. The actual abatement may be assigned to a City department or contracted out through standard procedures.

(C) *Responsibility of offender for costs of enforcement.* Neighborhood Code Compliance shall make a statement of the actual cost incurred in eliminating the environmental public nuisance. The costs shall include: cost of removal of the public nuisance administrative fees and recording fees. The administrative fees shall not limit whatever might be necessary in costs to enforce this Chapter. Said statement shall be delivered to the property owner by first-class mail. The owner shall pay the amount noted to the City within 30 days after date the invoice is issued, which shall be deposited to the general fund of the department specified to enforce the ordinance.

(D) *Failure to pay.* If the owner fails to pay the amount within 30 days after the date the invoice is issued, a copy of all costs shall be filed in the Office of the Auditor of Allen County for the purpose of placing the amount claimed on the tax duplicate against the property so that the amount claimed can be collected as taxes are collected, subject to the limitations above.

('74 Code, § 32-6) (Ord. G-09- 88, passed 5-24-88; Am. Ord. G- 06-92, passed 2-20-92; Am. Ord. G-14-98, passed 3-10-98; Am. Ord. G-11-02, passed 4-23-02; Am. Ord. G-19-23, passed 7-11-23)

§ 100.21 PROPERTY OWNER OR OCCUPANT'S RIGHT TO OBJECT TO COMPLAINT.

(A) Upon receipt of a notice to abate, the property owner or occupant served, or his duly authorized representative, may notify the Department of Neighborhood Code Compliance of an intent to object to any notice to abate. This correspondence shall be in writing and delivered by email, in person to the Neighborhood Code Compliance office or a mail service, and shall specify the street address and legal description of the property involved. Any such correspondence must be received by the Department of Neighborhood Code Compliance within the amount of time set out in the notice to abate.

(B) Upon receipt of such correspondence, the Department of Neighborhood Code Compliance shall provide copies of same to the City Attorney if necessary and to the Inspector involved, who shall cause the objection to be investigated. No further action shall be pursued against that owner to abate the environmental public nuisance until resolution of the objection thereto.

('74 Code, § 32-8) (Ord. G-09- 88, passed 5-24-88; Am. Ord. G- 06-92, passed 2-20-92; Am. Ord. G-19-23, passed 7-11-23) Penalty, see § [100.99](#)

§ 100.22 SEVERABILITY.

If any provisions or term of this chapter, or any application thereof, is held invalid, the invalidity shall not affect other applications of the provisions or terms of this chapter which reasonably can be given effect without the invalid provision or term or the application thereof.

(Ord. G-06-92, passed 2-11-92; Am. Ord. G-19-23, passed 7-11-23)

§ 100.23 ADOPTION OF STATE LAW.

It is the express intent of this chapter to adopt IC 36-7-10.1-3.

(Ord. G-06-92, passed 2-11-92; Am. Ord. G-11-02, passed 4-23-02; Am. Ord. G-19-23, passed 7-11-23)

§ 100.24 DELEGATION OF ENFORCEMENT POWERS.

The City-County Department of Health, the Department of Solid Waste and any City Department as designated by the Mayor have full authority to enforce this Chapter.

(Ord. G-12-00, passed 4-11-00; Am. Ord. G-19-23, passed 7-11-23)

§ 100.99 PENALTY.

(A) Any person violating any of the provisions of § [100.01](#), upon conviction thereof, may be fined for each offense, in any sum not less than \$25 nor more than \$100, and each day's violation shall constitute a separate offense. ('74 Code, § 14-7) (Ord. G-37-77, passed 9-27-77)

(B) Except as otherwise provided herein, any owner or occupant violating any of the provisions of §§ [100.15](#) through [100.21](#) may be fined not less than \$25. Each day such violation exists may be deemed to constitute a separate offense. Each second and subsequent offense shall carry a minimum fine of not less than \$50. In addition to any fine imposed herein, the offender shall be responsible for all costs of abatement and any additional fees associated with the case.

('74 Code, § 32-7) (Ord. G-09-88, passed 5-24-88; Am. Ord. G-06-92, passed 2-20-92; Am.Ord. G-20-07, passed 9-11-07; Am. Ord. G-19-23, passed 7-11-23)