

**AN ORDINANCE REGULATING PUBLIC
NUISANCES ON PRIVATE PROPERTY WITHIN
THE TOWN OF WINAMAC, INDIANA**

Ordinance No. 4 of 2018

WHEREAS, the Town of Winamac, Indiana (the “**Town**”), in the interests of protecting public safety, health and welfare, as well as for the purpose of enhancing the environment for residents of the Town, is desirous of making it unlawful for property owners and occupants to allow an environmental public nuisance to exist; and

WHEREAS, the Town Council of the Town of Winamac, Indiana (the “**Town Council**”), pursuant to Ind. Code § 36-8-2-4, as a unit of government, may regulate conduct, use, or possession of property that might endanger the public health, safety, or welfare of its citizenry.

NOW, THEREFORE, BE IT RESOLVED, by the Town Council of the Town of Winamac, Indiana, that the following Ordinance Regulating Public Nuisances on Private Property Within the Town of Winamac, Indiana, be adopted as follows:

Section I.
Definitions

1. “**Environmental Public Nuisance**” shall mean:
 - (a) Vegetation on private or governmental property that is abandoned, neglected, disregarded or not cut, mown, or otherwise removed and that has attained a height of eight (8) inches or more;
 - (b) Vegetation, trees, or woody growth on private property that, due to its proximity to any governmental property, right-of-way, or easement, interferes with the public safety or lawful use of the governmental property, right-of-way or easement, or that has been allowed to become a health or safety hazard;
 - (c) A drainage or stormwater management facility, on private or governmental property, which facility has not been maintained;
 - (d) Private Property that has accumulated litter or waste products, whether it be organic waste, lumber or other material, excluding building material for new construction, or any other unsightly inorganic material, unless specifically authorized under existing laws and regulations, that has otherwise been allowed to become a health or safety hazard;
 - (e) Sanitation, recyclable material, or other garbage or refuse, not placed in the designated Town or other privately provided disposal bins for pick-up.

2. **“Excluded Property”** shall mean:
- (a) Cultivated land in commercial, domestic, agriculture or horticulture use;
 - (b) An existing natural or developed forest that does not create a health or safety hazard;
 - (c) A wetland area designated by the United States Department of Interior Fish and Wildlife Division on a National Wetlands Inventory Map and/or determined to be a wetland area by the State of Indiana.
3. **“Governmental Property”** shall mean real estate that is owned leased, controlled, or occupied by the United States, the State of Indiana, or any political subdivision thereof.
4. **“Occupant”** shall mean the person, firm, partnership, association, corporation, business trust, joint stock company, unincorporated organization, religious charitable organization, or entity who is from time to time in possession or exercising dominion and control over the real estate or any house or other structure located thereon. Occupant shall include the lessee of the property.
5. **“Owner”** shall mean the record owner or owners, as reflected by the most current records in the County Assessor’s Office.
6. **“Private Property”** or **“Property”** shall mean all real estate within the Town’s corporate limits, except governmental property.
7. **“Recipient”** shall mean the owner or occupant to whom notice of violation has been directed.
8. **“Repeat Violation”** shall mean when a property owner or occupant, who has previously been issued notice of a similar environmental public nuisance for the same property, or who has been found by a hearing or judicial officer to have allowed a similar environmental public nuisance to exist at that property within eighteen (18) months of the date of the previous notice or finding of violation, whichever is later.

Section II.

Application of Chapter

1. **Governmental Property.** Each department or agency of the United States, the State of Indiana, or the Town of Winamac, or other political subdivision thereof, shall be required to keep governmental property within the Town free from environmental public nuisance.

2. **Private Property.** All owners, occupants, or other persons in control of any private property within the Town, shall be required to keep governmental property within the Town free from environmental public nuisance.

Section III.

Prohibited Activity and Determination

1. **Prohibition.** It shall be unlawful for any property owner or occupant to allow an environmental public nuisance to exist. This provision shall not apply to excluded property.

2. **Determination of Violation.** If the Town, or any agent of the Town, receives a complaint regarding an environmental public nuisance on any property within the Town boundaries, said agent or Town employee shall forward that complaint to the Town Council, who shall make a record of, and assign a case number to, such complaint. An authorized individual shall visually inspect the property in question.

3. **Notice of Violation.** Notice of violation described in Section III, Paragraph 2, shall be issued either by personal service, or by first class United States mail, postage prepaid. Such notice shall state the nature of the alleged environmental public nuisance and the action deemed necessary to correct the condition, and shall fix a date not sooner than ten (10) days from the date of the notice for vegetation of a height of eight (8) inches or more, and twenty-one (21) days from the date of the notice for all other violations under this chapter, when the property will be reinspected. The notice shall inform the recipient that, if the condition is not corrected upon reinspection, the Town Council has the right to enter upon the property to abate or correct the condition and bill the recipient for costs incurred in so doing. A notice to the occupant at the real estate or to the owner at the address to which property tax statements are sent as these addresses are shown by the most current records in the County Assessor's office, shall be sufficient notice under this subsection.

4. **Correction Upon Reinspection.** If, upon reinspection, it is determined that the environmental public nuisance has been corrected, the recipient shall not be liable for any charges under this Ordinance.

Section IV.

Failure to Abate After Notice of Abatement by Town

1. **Abatement by Town.** If, upon reinspection, it is determined by the authorized individual that abatement has not occurred, or if vegetation of a height of eight (8) inches or more is present on a property in the same calendar year in which the Town previously abated a violation of a similar nature on that property, then the Town Council, or its designee, may enter upon the premises and abate the environmental public nuisance. The recipient shall be liable for the costs of abatement. After abatement is completed, the department shall, either by personal service or first class United States mail, postage prepaid, send the recipient a bill for the costs of abatement.

2. **Responsibility of Occupant or Owner for Costs of Abatement.** As reimbursement to the Town for its costs, the recipient shall, within ten (10) days of the date of the bill, pay to the Town the following fees and charges:

- (a) Any disposal fees actually incurred to dispose of litter and waste products removed;
- (b) Any other reasonable fees actually incurred in abating an environmental nuisance; and
- (c) Administrative, labor and equipment fees may be changed or established by Ordinance or Amendment, as necessary to assure that such fees are adequate to reimburse the Town.

3. **Hearing.** A recipient may request in writing an informal hearing before the Winamac Town Council, to dispute the existence of a violation and/or the accuracy of all or part of the costs of abatement billed. Upon receipt of a hearing request, the Town Council shall not take abatement action until after the Town Council notifies the recipient of his or her decision. After such hearing, the Town Council, shall determine the existence of a violation and/or the accuracy of all or part of the abatement costs billed and shall notify the recipient of any amounts due to the department. The decision of the Town shall be final.

4. **Civil Action to Recover Costs of Abatement.** Upon the failure of the recipient who was sent the notice of violation and bill to pay the appropriate fees and charges within the ten (10) day period, the Town Council may bring a civil action in court against such recipient to recover the amount billed, plus reasonable attorney's fees and court costs.

5. **Further Penalty.** Any owner or occupant found in violation of this Ordinance may be fined not more than One Hundred Dollars (\$100.00) for each violation. Each day such violation is permitted to continue shall constitute a separate violation. A previous violation may be considered in determining the penalty assessed. A finding that a violation has occurred or an admission that a violation has occurred is not required to assess and recover a penalty, if the recipient subject to the penalty agrees to pay the penalty, pursuant to either an agreed judgment or consent decree in a court action for an Ordinance violation.

- (a) A recipient may be fined not more than Two Hundred and Fifty Dollars (\$250.00) for each repeat violation. Each day such repeat violation is permitted to continue shall constitute a separate violation under this Section IV, Paragraph 5(a).
- (b) The Town may publish a list of the names of owners and occupants who have been cited for a repeat violation under this Ordinance, and the addresses of the affected properties. The Town Council shall determine the frequency of publication.

6. **Variance.** An owner or occupant may submit a written request for a variance to the Town Council, if compliance with this chapter will cause undue hardship to such owner or

occupant without a sufficient corresponding benefit to the health or safety of the public. To receive consideration, such request must be received prior to the time the Town abates the environmental nuisance on the property. Upon receipt of a request, the Town Council shall schedule a hearing and notify the owner or occupant of the time and place. At least ten (10) days prior to the hearing, the owner or occupant shall notify in writing the owners and occupants of all property within one hundred fifty (150) feet of the property for which the variance is requested. The notice shall state the location of the property for which the variance is requested, the nature of the variance requested, and the time and place of the hearing. At the hearing, the owner or occupant requesting the variance, representatives of the Town, representatives of state or local governmental health authorities, and any person affected by the proposed variance may present evidence. After the hearing, the Town Council may grant or deny the request. The decision of the board shall be final. Within ten (10) days of the decision, written notice of the Town Council's decision shall be given to the owner or occupant who requested the variance.

7. **Other Rules and Regulations.** The Town Council may, by resolution, promulgate rules and regulations necessary to implement and carry out the provisions of this Ordinance.

8. **Severability.** In the event any section, subsection, clause, phrase, or portion of this Ordinance is for any reason held illegal, invalid, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remainder of this Ordinance. It is the legislative intent of the Town Council that this Ordinance would have been adopted if such illegal provision had not been included or any illegal application had not been made.

Section V.

Effective Date

This Ordinance shall become effective thirty (30) days after notice of the adoption shall have been published in a paper as described in Indiana Code § 5-3-1-4.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF WINAMAC, INDIANA,
THIS 11th DAY OF JUNE, 2018.

THE WINAMAC, INDIANA TOWN COUNCIL

APPROVED:

OPPOSED:

Tom J. Murray, President

Tom J. Murray, President

Alvin R. Parish, Council Member

Alvin R. Parish, Council Member

James Watkins, Council Member

James Watkins, Council Member

Dan Vanaman, Council Member

Dan Vanaman, Council Member

Judy Heater, Council Member

Judy Heater, Council Member

ATTEST:

Melanie A. Berger, Clerk-Treasurer