

ORDINANCE 2020 09

**AN ORDINANCE REPEALING AND REPLACING CHAPTER 97 OF THE
CITY OF AUSTIN, INDIANA CODE OF ORDINANCES REGULATING
DEBRIS, GRASS, WEEDS, AND RANK VEGETATION**

WHEREAS, the City of Austin Common Council ("Council") has the authority pursuant to I.C. 36-7-10.1 to require owners of real property located within the City of Austin to cut and remove grass, weeds and other rank vegetation, as defined herein, from their property;

WHEREAS, pursuant to I.C. 36-7-10.1, if property owners, after receiving proper notice, violate the City's ordinance by not cutting and removing grass, weeds, and other rank vegetation growing on their property, the City may enter onto the property and abate said violation;

WHEREAS, the City may collect from the property owner the costs it incurs to abate the violation, including administrative costs, removal costs, and the cost of sending notice;

WHEREAS, the Council desires to repeal Section 97.01 et. seq. of the City Code relating to grass, weeds and rank vegetation and to adopt, in its place, the following:

NOW THEREFORE BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF AUSTIN, INDIANA:

Section 1: Chapter 97 of the City Code should be replaced with the following language:

Sec. 97.01: **Enforcement Authority.** The City police department, any code enforcement officer, any building commissioner, and any building inspector may enforce and administer this Chapter.

Sec. 97.02: **Definitions.**

"Debris" shall include the remains of something broken-down or destroyed.

"Rank Vegetation" shall include those weeds and growing vegetation which is excessively vigorous in growth, shockingly conspicuous, malodorous and/or flagrant. This definition shall also apply to any and all vegetation that inhibits a

safe field of view along any public roadway.

“Weeds” shall include any plant that is not valued where it is growing, and is of rank growth, tends to overgrow or choke out more desirable plants and/or is listed as a weed in the U.S. Department of Agriculture publication entitled *Common Weeds of the United States*, or in any similar government publication.

Weeds and *Rank Vegetation* shall not include agricultural crops such as hay and pasture unless they pose a threat to public safety.

Sec. 97.03: Violation. It shall be a violation of this Chapter for any property owner or person to allow grass, weeds, and/or rank vegetation to grow more than a height of eight inches. No person should allow any debris to exist on their property.

Sec. 97.04: Requirement to Remove. All owners of property located within the City shall cut and remove grass, weeds, and other rank vegetation growing thereon that exceeds a height of eight inches and shall keep their property clear of debris.

Sec. 97.05: Violation Warning and Notice. In the event of a violation of this Chapter, a written warning (“Warning”) shall be issued to the property owner and/or occupants by personal delivery, by leaving the notice conspicuously on a front exterior door, service by U.S. first class mail, or any other manner service is recognized in the Indiana Rules of Trial Procedure. The Warning shall contain the following information:

1. Describe, with reasonable particularity, the conditions that constitute a violation of this Chapter;
2. Direct the property owner and/or occupants to abate the violation within five days; and

3. Advise the property owner and/or occupants that if the violation is not abated within the prescribed time, a violation notice (“Notice”) will be issued.

If a violation of this Chapter is not abated within five days, a Notice shall be issued to the property owner and all persons with a substantial property interest in the property, at the last address of each, as indicated in the records of the Scott County Auditor on the date of the Notice.

The Notice shall be mailed via first class mail and contain the following information:

1. Inform the property owner, and all persons with a substantial property interest in the property, of a violation of this Chapter;
2. Describe, with reasonable particularity, the conditions that constitute the violation;
3. Direct the property owner, and all persons with a substantial property interest in the property, to abate the violation within ten days of receipt of the Notice;
4. Inform the property owner, and all persons with a substantial property interest in the property, that if the violation is not abated within ten days, that the City may elect to abate the violation and bill the property owner for the costs incurred by the City, including administrative costs, title search fees, and attorney’s fees; and
5. Advise the property owner, and all persons with a substantial property interest in the property, that the violation may be appealed by submitting, within ten days from the date of receipt of the Notice, a written notice of appeal.

The issuance of a Warning, prior to the issuance of a Notice, is the preferred policy of the City for first time offenders of this Chapter, but this decision is discretionary and not a prerequisite to the issuance of a Notice or abatement action by the City.

Sec. 97.06: **Appeal of Notice.** Any Notice issued pursuant to this Chapter may be appealed to the Board of Public Works and Safety ("Board") if written notice of appeal is served by the landowner on the City within the time period contained in the Notice. A written notice of appeal shall be served on the Clerk-Treasurer of the City. The timely appeal of a Notice shall toll the abatement period pending the issuance of a decision thereon by the Board.

Sec. 97.07: **Abatement.** If the property owner fails to timely abate each violation set forth in a Notice, the property owner shall be deemed to have granted permission to the City to enter the property owner's property for the limited purpose of inspecting, cutting and/or removing such debris, weeds or rank vegetation located thereon and identified in the Notice. If the City determines that abatement is necessary, the City shall post a continuous abatement notice conspicuously at the property at the time of abatement. Said continuous abatement notice shall serve as notice to the property owner, and all persons with a substantial property interest in the property, that each subsequent violation during the same calendar year for which the initial Notice was provided may be abated by the City or its contractors without further notice.

The City shall prepare a certified statement as to the actual administrative and other costs incurred by the City in taking any abatement action, and mail a copy of the invoice on the property owner and all persons with a substantial property interest in the property via first class mail. The property owner shall, within ten calendar days from the date on which the property owner is mailed such invoice, pay in full the amount stated thereon to the City.

Sec. 97.08: **Appeal of Costs.** Any invoice issued pursuant to this Chapter may be appealed to the Board if written notice of appeal is served on the Clerk-Treasurer within ten calendar days from the date on which the invoice is mailed to the property owner and all persons

with a substantial property interest in the property. The timely appeal of an invoice shall toll the payment period pending the issuance of a decision thereon by the Board.

Sec. 97.09: Time of Appeals. The Board shall hear any timely requested appeal of a Violation or invoice within thirty calendar days following receipt of the same and shall thereafter promptly issue a written decision granting or denying, in whole or in part, the appeal. Three days after the date on which the Board's decision is mailed to the property owner and all persons with a substantial property interest in the property shall thereafter become the first calendar day of the abatement period or payment period, as applicable.

Sec. 97.10: Failure to pay. If an invoice issued pursuant to this Chapter remains unpaid after the due date, the City shall certify to the County Auditor the amount of the invoice, plus any and all other costs incurred. The Auditor shall place the total amount so certified on the tax duplicate for the property at issue, and the total amount, including any accrued interest, shall be collected as delinquent taxes are collected and shall be disbursed to the general fund of the City.

Sec. 97.11: Penalty. Any person violating any of the provisions or failing to comply with any of the requirements of this Chapter shall be guilty of an offense. Any person convicted of an offense shall be punished by a judgment of not more than \$2,500.00. A separate offense shall be deemed committed on each day that a violation occurs or continues. This Chapter supplements and does not limit any other remedy or action available in law or in equity regarding the subject matter hereof.

Sec. 97.12: Exceptions. This Chapter is not intended to apply to properties being utilized in an agricultural manner, or properties or portions of property that are clearly intended to remain in a natural state, such as, but not limited to, woods, forests, creeks, hedgerows, wetlands, wildflower preservation areas, nature preservation areas, and/or natural wildlife habitats. The

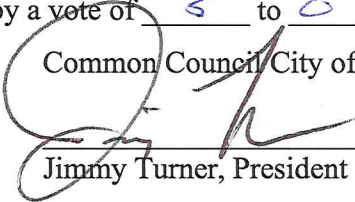
enforcement authority for this Chapter shall have discretion to determine whether the property in question qualifies under the exception stated herein.

Section 2. This Ordinance shall be in full force and effect in upon its passage by the City Council, its publication in accordance with law and upon the passage of any applicable waiting period, all as provided by the laws of the State of Indiana. All ordinances or parts thereof in conflict herewith are hereby ordered amended or repealed. If any provision is later to be found invalid it shall not operate to invalidate any other provision. All acts taken pursuant to the adoption of this Ordinance are hereby ratified.

PASSED AND ADOPTED by the Common Council of the City of Austin, Indiana on

Sept. 8, 2020, 2020 by a vote of 5 to 0.

Common Council City of Austin, Indiana


Jimmy Turner, President

Attest:


Chris Fugate, Clerk-Treasurer


Presented by me to the Mayor of the City of Austin for his approval or veto pursuant to Indiana Code § 36-4-6-15 and 16, on Sept 8, 2020 at 6:35 p.m.


Chris Fugate, Clerk-Treasurer

This Ordinance having been passed by the legislative body and presented to me is approved by me and duly adopted, pursuant to Indiana Code § 36-4-6-16(a)(1), on Sept 8, 2020 at 6:35 p.m.


Roger Hawkins, Mayor

Attest:


Chris Fugate, Clerk-Treasurer

PREPARED BY: Joshua Stigdon, #29501-72
Houston, Thompson and Lewis, PC
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