

**ORDINANCE 2014-02**

**AN ORDINANCE REGULATING THE USE AND POSSESSION OF PROPERTY  
IN THE CITY OF AUSTIN, INDIANA WHICH MIGHT ENDANGER THE  
PUBLIC HEALTH, SAFETY, OR WELFARE OF ITS CITIZENS**

WHEREAS, the Common Council of the City of Austin finds that health, welfare, safety and property values are negatively affected by certain uses, conduct and conditions related to accumulation of litter or trash, storage of certain materials and equipment, poor property maintenance, abandoned or leaking or damaged vehicles and unsafe storage of vehicles, and, therefore, constitute public nuisances; and

WHEREAS, The Common Council of the City of Austin desires to adopts the following ordinance to protect the health, safety, welfare and property values of Austin residents and property.

**NOW, THEREFORE BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF AUSTIN, INDIANA, as follows:**

**SECTION 1. PURPOSE.**

The Purpose of this Ordinance is to prohibit nuisance solid waste accumulation, illegal dumping, and littering on public and private property in the City of Austin, to establish penalties for violations thereof, and to provide for the abatement of nuisances. This ordinance is intended to protect the citizens of Austin, Indiana, from the burden of costs related to solid waste accumulation, illegal dumping, littering and clean up.

The primary intent of the ordinance is to discourage illegal dumping and littering on public and private property and to promote cleanup of nuisance solid waste. Elimination of improper disposal is necessary to protect human health and the natural environment, to protect surface and ground waters from pollution, and to protect the value of property from the negative effects of solid waste accumulation, dumping and littering. Fines and sanctions are meant to deter violations of this ordinance.

**SECTION 2. DEFINITIONS.**

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

**“ACCUMULATION/TO ACCUMULATE.”** To heap, pile up, amass or collect waste improperly or in improper storage containers for a period exceeding 15 days.

**“CONSTRUCTION/DEMOLITION WASTE.”** Any discarded construction or demolition materials including, but not limited to lumber, wood, concrete, soil, asphalt, dirt, paneling, drywall, roofing shingles, siding, plumbing, electrical, doors, windows, floor coverings, and cabinets.

**“DISCARD.”** To abandon, deposit, desert, discharge, dispose, drop, dump, eliminate, emit, jettison, leave, pitch, place, put, scrap, spill, leak, throw, or toss any item of solid waste or derivative thereof, or any inherent waste-like material in a manner such that the discarded substance remains upon the land as solid waste.

**“DUMPING/TO DUMP.”** The discarding along City roadways or at any location other than a site of generation, any items of solid waste, commonly known as garbage, rubbish, refuse, construction and demolition debris, household trash, baby diapers, food service wastes, old appliances, tires, scrap metal, vehicle parts, and all other items and materials defined as “solid waste” below.

**“ENFORCEMENT AUTHORITY.”** Any duly authorized ordinance control officer, all members of the Austin Police Department, or the Board of Works designee.

**“LITTER.”** Includes any man-made or man-used waste, which, if deposited within the City otherwise than in a litter receptacle, tends 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 vehicle parts, furniture, appliances, carcasses of dead animals, or other waste material of an unsightly, unsanitary, nauseous or offensive nature.

**“NUISANCE.”** Any condition or thing existing or allowed to exist that: 1) Injures or endangers the comfort, health or safety of others or the environment; 2) Unlawfully interferes with, obstructs or tends to destruct or renders dangerous for passage any public or private street, highway, sidewalk, alley, stream, or ditch; or 3) Unreasonably interferes with the comfortable enjoyment of life and/or property, or is likely to depreciate the value of other’s property.

**“OF RECORD.”** Recorded in the records of the recorder of Scott County, Indiana, or in the records of the auditor of Scott County, Indiana.

**“PUBLIC PLACE.”** Any and all streets, curbs, gutters, sidewalks, alleys or other public ways, any and all public parks, lakes, spaces, publicly owned rights-of-way, grounds, or buildings within the corporate limits of the City, or owned by the City.

**“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.

“SOLID WASTE.” Any garbage, refuse, sludge, or other discarded or disposed materials, including solid, liquid, or semi-solid or contained gaseous materials resulting from any operation, activity or source.

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

### **SECTION 3. PROHIBITION.**

No owner, occupant, tenant, or any person having a substantial property interest in any real or personal property within the City limits, or any agent thereof, shall maintain, create, cause, place, deposit, leave, or permit a nuisance to remain on such property, or upon any public place abutting such real or personal property.

### **SECTION 4. NUISANCES DESCRIBED.**

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

1. Litter.
2. Accumulations of rubbish, trash, refuse, junk, or other abandoned materials, metals, and lumber.
3. Fallen trees, dead trees, cut brush, fallen or cut limbs except stacked firewood.
4. Boxes, appliances, household items and tires.
5. Demolition remains.
6. Conducting any activity on public or private land which results in the accumulation of construction/demolition waste or solid waste.
7. Automobile parts, disassembled automobiles, automobiles without engines, plumbing and piping materials and parts, scrap metal, unseaworthy or dilapidated boats, dilapidated, deteriorated, or nonoperable jet skis, snowmobiles, bicycles, trailers, or mopeds.
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 water drainage.
11. Any dead animal or animal parts.
12. The erection of a dam or any other obstruction by a private party which prevents the natural flow of water and causes it to collect in 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, of any matter which attracts rodents, insects, domestic or wild animals in such manner as to create a health hazard or unsanitary or dangerous condition.
15. Any real or personal property, used as a place of residence or habitation or for sleeping, that is 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. This does not include the safe storage of gasoline, propane tanks, or similar items used for common household purposes.
17. Trees, shrubbery, weeds, or other matter obstructing public ways, or causing visual barriers which create vehicular traffic or pedestrian safety hazards.
18. 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.
19. Accumulations of stagnant water.
20. 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.
21. Basketball goals or other privately owned structures erected in, or infringing upon, any public place.

#### **SECTION 5. AUTHORITY TO MAKE INSPECTIONS.**

It is made the duty of all officers and employees of the City to report the existence of nuisances to the enforcement authority. The enforcement authority or any other municipal employees so designated by the Board of Works, shall be authorized to visit, enter into or upon any lot, grounds or premises via normal routes of ingress and egress, within the limits of the City, for the purpose of making contact with a holder of substantial property interest, resident, or occupant to ascertain and discover any nuisances. The enforcement authority or any other municipal employees so designated by the Board of Works shall be authorized to make examination thereof if consent is provided by a holder of substantial property interest, resident, or occupant of the premises.

#### **SECTION 6. ABATEMENT NOTICE.**

1. **Abatement notice.** Where, upon inspection, reasonable cause is found to believe that a nuisance exists, the enforcement authority shall issue a written abatement notice.
2. **To whom notice is given.** Abatement notices shall be served upon 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 Scott County in

addition to other known holders of substantial property interests, including the resident, or occupant.

3. **Content of notice.** The abatement notice must contain:
  - a. The name of the person to whom the order is issued.
  - b. The legal description or address of the real estate where the nuisance is located which is the subject of the notice.
  - c. The action that the notice requires. The ordered action must be reasonably related to abatement of the conditions constituting the nuisance.
  - d. 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 allow a sufficient 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 to accomplish 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.
  - e. A statement that the order becomes final ten calendar days after notice is served, unless a hearing is requested in writing by the owner of record, 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.
  - f. A statement briefly indicating what action can be taken by the City if there is non-compliance with the orders contained in the abatement notice.
  - g. The name, business address, and business telephone number of the enforcement authority.
4. **Manner of giving notice.** Service of abatement notices shall be made by any of the following means:
  - a. Sending a copy of the notice by registered or certified mail to the residence or place of business or employment of the person to be notified, with return receipt requested.
  - b. Delivering a copy of the notice personally to the person to be notified.
  - c. Leaving a copy of the notice at the dwelling or usual place of abode of the person to be notified.
  - d. Posting a copy of the notice in a prominent place upon the premises where the nuisance is located.
  - e. If, after a reasonable effort, service cannot be obtained by any of the means described in subdivisions (4)(a) through (d), 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.
5. **Proof of service.** When service is made by any of the means described in this section, except by mailing or by publication, the person making service must make an affidavit stating that he has made the service, the manner in which service was made, to whom the order or statement was issued, the nature of the order or statement, and the date of service. The affidavit must be placed on file with the Board of Works. Where service is made by mailing, proof of service will

be evidenced by the postal service return receipt signed by the recipient. Where service is made by publication, service shall be evidenced by the publisher's certificate.

6. **Effective date of notice.** The date when notice is considered given is as follows:
  - a. If the notice is delivered personally or left at the dwelling or usual place of abode, notice is considered given on the day when the order or statement is delivered to the person or left at his dwelling or usual place of abode.
  - b. If the notice is mailed, notice is considered given on the date shown on the return receipt, or, if no date is shown, on the date when the return receipt is received by the Board of Works.
  - c. Notice by publication is considered given on the date of publication.

#### **SECTION 7. 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, shall abate the nuisance without the necessity of issuing an abatement notice as set out in Section 5 but only after notifying the Board of Works. The enforcement authority shall then present its actions to the Board of Works at the Board's next meeting following the abatement action.

#### **SECTION 8. HEARINGS.**

1. 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 Board of Works a written request for a 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 individual's disagreement with the content of the abatement notice.
2. Upon receipt of the written request for a hearing, the Board of Works shall place the matter on the agenda of the Board of Works for hearing. The Board of Works shall function as hearing body to adjudicate the matter.
3. The Board of Works 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.
4. At the hearing, which may be adjourned from time to time, it shall be the city'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 periods for remedial action, or alternate remediation plans.

5. 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 present oral arguments. Both sides may be represented by counsel.
6. All such hearings shall be open to the public pursuant to Indiana statutes on open meetings.
7. Upon conclusion of the presentation of evidence and oral argument, if any, the Board of Works shall deliberate and render a decision either confirming, amending, or rescinding the disputed content of the abatement notice. The decision of the Board of Works shall be final.
8. All time parameters set out in the abatement notice for completion of compliance actions shall be tolled, pending the outcome of the Board of Works' decision. In cases where the actions of the enforcement authority are upheld, or are upheld as modified by the Board, it shall be the responsibility of the Board, in its decision, to establish time periods for completion of compliance activities held in abeyance during the hearing process.

#### **SECTION 9. COMPLIANCE WITH ABATEMENT NOTICE.**

It being the intent of this chapter to promote the abatement of nuisances within the City of Austin, 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 Board of Works after hearing, and within the time periods set out in the abatement notice, or within any other extended time periods agreed to by the enforcement authority, or such time extensions as are, after the hearing, ordered by the Board of Works, no further fines or penalties will be imposed. The Board of Works shall make written note of the compliance and the enforcement file shall be closed.

#### **SECTION 10. FAILURE TO COMPLY WITH ABATEMENT NOTICE.**

Failure, neglect, or refusal by 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 Ordinance and shall render the record owner or his agent, or the tenant or occupant, liable to a fine as set forth in Section 12. 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 Ordinance. 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 11. ABATEMENT BY CITY.**

1. In addition to fines imposed under Section 12, in non-emergency situations where abatement is not accomplished immediately by the City, failure, neglect, or refusal of any party to abate a nuisance as required by the abatement notice shall authorize the enforcement authority to obtain the permission of the Board of

Works 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 Scott County, Indiana, to give constructive notice to subsequent purchasers that the real estate is subject to the costs associated with the abatement. Work may be accomplished with City crews 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 record owner by certified mail. Should such costs remain unpaid ten calendar days after receipt by the 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.

2. In the alternative, where there has been non-compliance with the abatement notice, the City 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 12. PENALTY.**

1. In addition to any other costs imposed under this Ordinance, any person who is found to have violated this chapter, or willfully or negligently failed to comply with any provision of this Ordinance or with any orders issued hereunder, shall be fined not less than \$500, nor more than \$2,500 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.
2. The Uniform Traffic Citation may be utilized for the purpose of evidencing violation of this Ordinance. Enforcement shall be in effect by the filing of a civil suit seeking judgment in the amount of the fine imposed, plus court costs.

#### **SECTION 13. SEVERABILITY.**

Each section, subsection, sentence, clause and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause and phrase, and the finding or holding of any section, subsection, sentence, clause or phrase to be unconstitutional, void or ineffective for any cause shall not affect any other section, subsection, sentence, clause or phrase or part hereof.

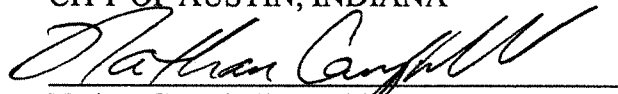
This ordinance shall repeal all Ordinances in conflict herewith, and be in full force and effect from and after its due passage.

PASSED AND ADOPTED by the Common Council of the City of Austin, Indiana on the 3<sup>rd</sup> day of April, 2014 by a vote of four (4) to one (1).



COMMON COUNCIL

CITY OF AUSTIN, INDIANA

  
Nathan Campbell, President


Attest:

  
Dillo Bush, 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, this 10<sup>th</sup> day of APRIL, 2014 at 9:00 A.m.

  
Dillo Bush, 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), this 10<sup>th</sup> day of APRIL, 2014 at 9:00 A.m.

  
Douglas Campbell, Mayor

Attest:

  
Dillo Bush, Clerk-Treasurer

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