

TOWN OF LAFONTAINE

ORDINANCE NO. 1, 2018

AN ORDINANCE REGULATING WEEDS AND RANK VEGETATION

WHEREAS, the Town Council of the Town of LaFontaine, Indiana believes it would be in the best interests of the citizens of the Town if an ordinance regulating weeds and other rank vegetation were adopted;

WHEREAS, the Town Council believes that such an ordinance promotes the public interest in furthering public safety, health, welfare, general aesthetics, and common good within the Town;

WHEREAS, Indiana Code 36-7-10.1 *et seq.* authorizes the Town of LaFontaine to pass an ordinance requiring the owners of real property located within the Town to cut and remove weeds and other rank vegetation growing on the property.

NOW THEREFORE, BE IT ORDAINED, by the Town Council of the Town of LaFontaine, Indiana, as follows:

1. Definitions. As used in this ordinance, the term:
  - a. "weeds and other rank vegetation" is defined as any undesirable, uncultivated plant, including weeds, grass, and vegetation, that, when left uncut, produce an excessive growth; the term does not include shade trees, ornamental shrubs, fruit trees, domesticated berry bushes and vines, or agricultural crops and plantings that are appropriately maintained;
  - b. "person" means any individual, firm, organization, association, partnership, trust, company, corporation, limited liability company, or any other entity;
  - c. "responsible party" means any person who has a substantial property interest in real property on which a violation under this ordinance has been committed; and
  - d. "substantial property interest" means any right in real property that may be affected in a substantial way by actions authorized by this ordinance, including but not limited to a fee interest, life estate interest, future interest, present possessory interest, or an equitable interest of a contract purchaser.
2. Weeds and Other Rank Vegetation Exceeding Eight (8) Inches Prohibited. It shall be a violation of this ordinance for a person to cause or permit weeds and other rank vegetation exceeding eight (8) inches in height to be upon property located within Town limits in which he or she has a substantial property interest.
3. Joint and Several Responsibility.
  - a. All responsible parties shall be jointly and severally responsible for maintaining property in compliance with this ordinance.

- b. In the event a violation under this ordinance occurs, each responsible party is deemed to have committed the violation, whether or not such responsible party personally contributed to or was actually aware of the violation.
4. Enforcement Authority. The Town Street Commissioner or his designee, or any employee of the Town hereinafter designated by the Town Council ("Enforcement Authority"), shall be responsible for the enforcement of this ordinance as provided in this section.
  - a. The Enforcement Authority is empowered to the fullest extent of the law, in the performance of its functions, to enter upon any property within the Town for the purposes of inspecting, examining, surveying, and/or placing and maintaining notices or signs thereon in connection with his duties under this ordinance.
  - b. The Enforcement Authority shall, upon request, present proper identification when entering upon any real property or structure in connection with his duties under this ordinance.
  - c. Whenever the Enforcement Authority finds weeds and other rank vegetation on real property within the Town that is in such a condition as to violate this ordinance, the Enforcement Authority shall promptly provide all information to the Town Clerk-Treasurer that may be necessary to issue an initial notice provided in section 5 herein.
5. Initial Notice. In the event the Enforcement Authority has determined a violation of this ordinance exists, the Town shall provide notice of the violation as follows.
  - a. The Town, by its Clerk-Treasurer, shall send a notice of violation to the following responsible party or parties:
    - i. the owner of record of the real property with a single owner, or
    - ii. at least one (1) of the owners of real property with multiple owners at the last address of the owner for the property as indicated in the records of the county auditor on the date of the notice.

See Ind. Code § 36-7-10.1-3(c).
  - b. The notice shall be sent by certified mail, return receipt requested.
  - c. The notice shall:
    - i. inform the responsible party of the action that must be taken to correct a violation;
    - ii. provide a deadline by which the responsible party must correct the violation, which deadline shall not be less than ten (10) calendar days from the date the notice is sent; and
    - iii. inform the responsible party of the potential penalties that may result if corrective action is not taken prior to the deadline.
  - d. The initial notice sent by the Town to the responsible party shall substantially conform to the form of the notice attached hereto as Exhibit A.

6. Procedure to Enter Real Property to Abate Violation. In the event a responsible party fails to abate a violation of this ordinance in compliance with an initial notice served under section 5 herein, the Town may elect to enter the real property to abate the violation as follows.
  - a. The Enforcement Authority may enter the real property in question to abate the violation.
  - b. Following the Town's abatement of the violation, the Enforcement Authority shall promptly provide all information to the Town Clerk-Treasurer that may be necessary to issue the billing notice as provided in section 7 herein.
7. Billing Notice. In the event the Enforcement Authority abates a violation of this ordinance, the Town Clerk-Treasurer shall send a billing notice to the responsible party as provided herein.
  - a. The billing notice shall be sent to the same person to whom the initial notice was sent as provided in section 5 herein.
  - b. The billing notice shall be sent by certified mail, return receipt requested.
  - c. The notice shall:
    - i. Inform the responsible party the amount which must be remitted to the Town for all costs incurred in abating the violation, as provided in section 10 herein.
    - ii. Provide a deadline by which the responsible party must pay all amounts due in full, which deadline shall be not less than thirty (30) calendar days from the date notice is sent; and
    - iii. Inform the responsible party that failure to remit payment in full by the deadline may result in a lien being placed on the property for the full amount of such costs, the initiation of collections proceedings, and/or litigation.
    - iv. The billing notice sent by the Town to the responsible party shall substantially conform to the form of the notice attached hereto as Exhibit B.
8. Continuous Abatement.
  - a. If an initial notice of a violation of this ordinance was provided, and the violation was not remedied by the deadline provided under this ordinance, the Enforcement Authority may post a continuous abatement notice.
  - b. The continuous abatement notice services as notice to the responsible party that each subsequent violation may also be abated by the Town as provided in section 6 herein.

See Ind. Code § 36-7-10.1-3(d); Ind. Code § 36-1-6-2.

9. Procedure for Appeal.

- a. A notice issued under this ordinance becomes final after ten (10) days have passed from the date the notice was sent, unless the responsible party requests a hearing.
- b. Requests for hearings must be made in writing and submitted at the Town Hall.
- c. Upon the submission of a timely and valid request for hearing, a hearing shall be scheduled before the Town Council.
- d. Such a hearing shall be held within thirty (30) days of the date the hearing was requested.
- e. At the hearing, the person(s) to whom the notice was issued, or any other person having a substantial property interest in the subject real estate may appear in person or by counsel. Each person appearing at the hearing is entitled to present evidence, cross-examine opposing witnesses, and present arguments.
- f. At the conclusion of any hearing, the Town Council, acting as the hearing authority, may:
  - i. Table the issues until further hearing;
  - ii. Affirm the order;
  - iii. Rescind the order; or
  - iv. Modify the order.

10. Penalties for Violations. If a responsible party is found to have committed a violation of any term of this ordinance and has not corrected the violation by the deadline provided in the notice, the Town may impose any or all of the following penalties upon any responsible party:

- a. Take action to remedy the violation and assess the responsible party for costs incurred in so doing, which costs may be recorded as a lien against the property and/or collected through court proceedings. Such costs shall include the cost of remedying the violation at the rate of One Hundred Dollars (\$100.00) per hour, administrative costs associated with remedying the violation, including attorney's fees, and the costs of serving notice; and
- b. Impose a fine not to exceed One Hundred Dollars (\$100.00). Each day a violation continues shall constitute a separate offense.

11. Miscellaneous.

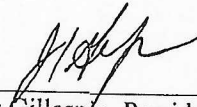
- a. Any references to state statutes herein shall mean the statute as it may be amended from time to time, or any similar statutory provisions that may supersede prior versions.
- b. Should any term of this ordinance be declared by a Court to be invalid for any reason, the remaining provisions shall not be affected and shall remain in full force and effect.

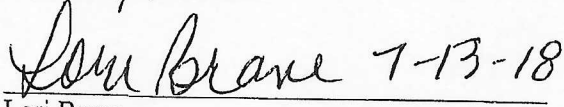
- c. Any amounts collected to enforce this ordinance shall be disbursed to the general fund of the department specified to enforce the ordinance. See Ind. Code § 36-7-10.1-5.
- d. This ordinance shall supersede and cause to be repealed Town Ordinance No. 2, 2003—Environmental Public Nuisances.

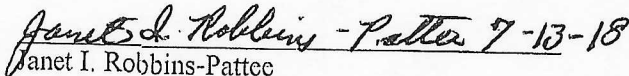
This ordinance shall become effective upon passage.

Adopted this 13th day of July, 2018.

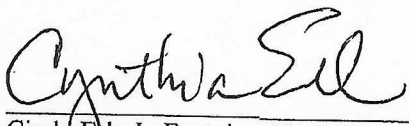
TOWN COUNCIL

 7-13-18  
\_\_\_\_\_  
Jay Gillespie, President

 7-13-18  
\_\_\_\_\_  
Lori Branc

 7-13-18  
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Janet I. Robbins-Pattee

ATTEST:

  
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Cynthia Erb, LaFontaine Clerk-Treasurer