

ORDINANCE NO. 2-2024

WEED/RANK VEGETATION CONTROL AND NATURAL LANDSCAPE ORDINANCE

WHEREAS, Indiana Code Sections 36-1-3-1 et.seq. permit any town in the State of Indiana to exercise any power or perform any function necessary to the public interest in the context of its municipal or internal affairs, which is not prohibited by the Constitution of the United States or of the State of Indiana, or denied or pre-empted by any other law, or is not expressly granted by any other law to another governmental entity;

WHEREAS, the Town Board of the Town of Roann is the Town legislative body and is by law authorized to adopt ordinances and resolutions for the performance of functions for the Town of Roann;

WHEREAS, Indiana Code Section 36-7-10.2 et.seq. provides authorization for the Town Board of the Town of Roann to adopt an ordinance requiring the cutting and removal of grass, weeds and other noxious and/or rank vegetation growing on property in the Town of Roann, Indiana; and

WHEREAS, the Town Board of the Town of Roann, Indiana deems it to be within the public interest to further the public safety, health, welfare, general aesthetics, and common good with the Town of Roann that such an ordinance be established;

BE IT HEREBY ORDERED, RESOLVED and ESTABLISHED that the owners and occupiers of real estate situated within the geographical limits of the Town of Roann are hereby required to promptly cut and remove grass, weeds, noxious vegetation and/or rank vegetation growing thereon. No person shall allow any weeds, grass or vegetation to grow to a height nine (9) inches from the ground on any real property owned, leased or controlled by him within the Town of Roann, Indiana. All weeds and grass in an excess of nine (9) inches are hereby declared to be a public nuisance and may be abated in accordance with law. All noxious vegetation and/or rank vegetation, regardless of height, are hereby declared to be a public nuisance and may be abated in accordance with law.

Now, therefore, be it resolved by the Board of the Town of Roann, Indiana as follows:

1. Definitions

- a. Buffer or buffer strip
 - i. a unit of yard, together with the plantings required thereon, designed to mitigate nuisance between adjacent land uses or between a land use and a public street.
- b. Invasive terrestrial plant species
 - i. are plants that are not native to the area in question and have or are likely to cause environmental, human health, or financial harm. Invasive terrestrial plant species shall be as defined in 312 IAC 18-3-25.
- c. Landscaping

- i. the active involvement in the encouragement of selected plants to grow on a site.
- d. Native vegetation
 - i. grass and flowering broad-leaf plants that are native to, or adapted to, the state or plant species classified by the Indiana Department of Natural Resources as native and that are commonly found in meadow and prairie plant communities. Native vegetation does not include weeds as defined by this section.
- e. Natural Landscape
 - i. the utilization of native water conserving, drought tolerant landscaping or other appropriate plant material that does not require special attention to grow properly.
 - ii. the use of groups of plants native to the area.
- f. Natural Landscape Permit
 - i. a permit issued by the Town of Roann allowing for native and natural plantings to exceed nine (9) inches in height in designated areas with conditions.
- g. Noxious weeds
 - i. plants as defined and designated pursuant to the Indiana Noxious Weed Law, IC 15-16-7-2, as amended from time to time, or plants designated by the commissioner of agriculture pursuant to the state statutes, those identified by the county, or USDA-APHIS.
 - ii. Noxious weeds includes, but is not limited to, Canadian and bull thistles, bind weed, wild garlic, wild grasses such as crab, Johnson, pepper, and quack, giant foxtail, winter crest, buckhorn, corn cockle, curled dock, dodder, horse nettle, oxeye daisy, penny crest, wild mustard, and horse weeds.
- h. Person
 - i. Any individual, firm, organization, association, partnership, trust, company, corporation, limited liability company, or any other entity.
- i. Pollinators
 - i. are animals that aid in a plant's reproductive process of pollination. These include insects and wildlife such as bees, butterflies, beetles, hummingbirds and bats.
- j. Property Owner
 - i. a person, corporation, trust, partnership, or other entity that owns a fee simple interest or life estate in a parcel of real property within the geographical limits of the Town of Roann.
- k. Rank vegetation
 - i. any undesirable, uncultivated plant including weeds, grass, and vegetation, excepting agricultural crops, such as hay and pasture, while growing. Weeds and rank vegetation shall be defined to include agricultural crops after the time for harvesting has passed;

- ii. lawn grass or weeds which are permitted to grow to a height of more than nine (9) inches;
 - iii. any noxious vegetation regardless of height, location, or the use of the property;
 - iv. trees, bushes, shrubs, vines, and the like, whether cultivated or naturally growing, which are permitted to grow so as to encroach upon, obstruct the normal use of or render hazardous a public sidewalk or vehicular thoroughfare; or
 - v. encroach upon, impair the normal use and enjoyment of or detract from the appearance of any adjacent public or private property.
- l. Regularly cut
- i. mowing or otherwise cutting vegetation so that the dimension of the vegetation measured from the ground to the top of the vegetation (as extended upright), regardless of if that is the blade of the vegetation or any other part of the plant, does not exceed nine (9) inches.
- m. Responsible Party
- i. Any person, property owner and/or tenant, who has a substantial property interest in real property on which a violation under this ordinance has been committed.
- n. Substantial Property Interest
- i. 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.
- o. Tenant
- i. a person, corporation, trust, partnership, or other entity that leases, possesses, or otherwise occupies a parcel of real property without owning said real property within the geographical limits of the Town of Roann.
- p. Turf grasses
- i. bluegrass, fescue, ryegrass, or similar blends with non-woody vegetation interspersed with them commonly used in regularly cut lawns.
- q. Weeds
- i. any plant, vine or small bush which is naturally growing and is not normally planted deliberately, cultivated, and maintained for ornamental or agricultural purposes.
 - ii. prohibited noxious weeds as identified by the state department of agriculture, the county, or USDA-APHIS and any undesirable or troublesome plant that is horticulturally out of place exceeding the height limitations in this section. For the purposes of this section, *Taraxacum* spp (common dandelion) is not considered a weed.

2. Weeds, Rank Vegetation, and Noxious Weeds Exceeding Nine (9) Inches Prohibited

- a. It shall be unlawful and a public nuisance for any person having control of any property within the Town of Roann to allow or maintain on such property any noxious weeds, rank vegetation, turf grass, or weeds in excess of nine (9) inches in height. The property owner or tenant of any lot or parcel of land shall abate or prevent such nuisance on such lot or parcel. Abatement of such nuisance shall cause the vegetation to be cut, removed and/or treated for weeds.

3. Enforcement

- a. The Town Marshal shall be responsible for the enforcement of this ordinance as provided in this section
 - i. The Town Marshal is empowered to the fullest extent of the law, in the performance of its functions, to enter upon any property within the Town of Roann for the purposes of inspecting, examining, surveying, and/or placing and maintaining notices or signs thereon in connection with his duties under this ordinance.
 - ii. The Town Marshal shall, upon request, present proper identification when entering upon any real property or structure in connection with his duties under this ordinance.

4. Notice of Violation

- a. In the event the Town Marshal has determined a violation of this ordinance exists, the Town Marshal shall provide notice of the violation to the property owner or tenant to abate the violation within seven (7) calendar days of the issuance of the notice by cutting and removing, as required by the notice, the noxious weeds, rank vegetation, turf grass, and/or weeds.
- b. In the event the property owner and/or tenant shall fail or refuse to cut and remove the noxious weeds, rank vegetation, turf grass, and/or weeds within a period of seven calendar days from the date of such notice by the Town Marshal, the Town Marshal shall notify the Clerk-Treasurer of the Town of Roann.
- c. The Clerk-Treasurer of the Town of Roann shall send a notice of violation within seven (7) business days as follows:
 - i. The notice shall be sent to the following responsible party or parties:
 - 1. the owner of record of real property with a single owner; or
 - 2. 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 IC 36-7-10.1-3(c)
 - ii. The notice shall be sent in accordance with IC 1-1-7-1.
 - iii. The notice shall:

1. Inform the responsible party of the action that must be taken to correct a violation;
 2. 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
 3. Inform the responsible party of the potential penalties that may result if corrective action is not taken prior to the deadline.
- iv. If the notice is returned undelivered, the notice must be given by:
1. Delivering a copy of the notice to the person to whom the notice must be give personally;
 2. Leaving a copy of the notice at the dwelling house or usual place of abode of the person to whom the notice or other matter must be given;
 3. Sending by first class mail a copy of the notice to the last known address of the person to whom the notice must be given; or
 4. Serving the agent of the person to whom the notice must be given as provided by rule, statue, or valid agreement.
- v. If a statute enacted by the general assembly or a rule, as defined by IC 4-22-2-3, requires that notice or other matter be given or sent by registered mail, certified mail, any service of the United States Postal Service, or any service of a private delivery service, a person may use:
1. electronic service; or
 2. electronic filing;
- to comply with the statute or rule, if electronic service or filing is authorized under rules adopted by the supreme court for the type of notice or delivery described in the statute or rule.
- d. Pursuant to IC 36-7-10.1-3, if a notice of the violation of an ordinance was provided by certified mail, first class mail, or equivalent service under section 4(c)(iii), a continuous abatement notice may be posted at the property at the time of abatement instead of by certified mail, first class mail, or equivalent service as required under section 4(c)(iii). A continuous abatement notice serves as notice to the responsible party that each subsequent violation during the same calendar year for which the initial notice of the violation was provided may be abated by the Town of Roann, or its contractors.

5. Procedure to Enter Real Property to Abate Violation

- a. In the event a responsible party fails to abate a violation of this ordinance in compliance with a notice serviced under section 4 herein, the Town of Roann, or its designee, may elect to enter the real property to abate the violation as follows:
 - i. A representative or private contractor for the Town of Roann may enter the real property in question to abate the violation.

- ii. Following the abatement of the violation, the representative or private contractor for the Town of Roann shall promptly provide all information to the Clerk-Treasurer of the Town of Roann that may be necessary to issue the billing notice as provided in section 6 herein.

6. Billing Notice

- a. In the event a representative or private contractor for the Town of Roann abates a violation of this ordinance, the Clerk-Treasurer of the Town of Roann shall send a billing notice to the responsible party as provided herein.
 - i. The billing notice shall be sent to the same person(s) to whom the initial notice was sent as provided in section 4 herein.
 - ii. State the amount due to the Town of Roann at the cost of two hundred dollars (\$200) or the actual expense incurred by the Town of Roann, whichever is greater.
 - iii. 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 the notice is sent; and
 - iv. In the event the responsible party fails to pay the sum within the period of thirty (30) calendar days, a certified copy of the statement of costs shall be filed in Wabash County Auditor's Office and the Auditor shall place the amount claimed on the tax duplicate against the property owner affected by the work, and the amount shall be collected as taxes are collected.

See IC 36-1-6-2

7. Continuous Abatement

- a. If an initial notice of violation of this ordinance was provided, and the violation was not remedied by the deadline provided under this ordinance, the Town Marshal 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 of Roann as provided in section 5 herein.

See IC 35-7-10.1-3(d)

8. Appeal Process

- a. A violation or billing notice issued under this ordinance becomes final after ten (10) calendar days have passed from the date the notice was sent, unless the responsible party files an appeal using procedures provided in section 8(b).
- b. Appeals shall be made in writing and shall be delivered personally to the Roann Town Hall within not more than ten (10) calendar days from the date the notice or bill was sent.
- c. Upon submission of a timely and valid appeal, the Board of the Town of Roann may, but is not required to, conduct a hearing on the request of the responsible party.

- d. If the Board of the Town of Roann elects to conduct a hearing, the hearing shall be held at the next regularly scheduled Town Board Meeting.
- 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 Board of the Town of Roann, 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.

9. Penalties for Violations

- a. 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:
 - i. Take action to remedy the violation and assess the responsible party for costs incurred in so doing, which costs may be filed in Wabash County Auditor's Office and the Auditor shall place the amount claimed on the tax duplicate against the property owner affected by the work, and the amount shall be collected as taxes are collected; and
 - ii. Impose a fine not to exceed fifty dollars (\$50). Each day a violation continues shall constitute a separate offense.

10. Natural Landscape Permits

- a. A Natural Landscape Permit is required if a proposed landscape includes native vegetation that exceeds or is expected to exceed nine (9) inches in overall height. Permit applications shall be submitted to the Clerk-Treasurer for the Town of Roann. All natural landscape permit applications shall contain:
 - i. The name and address of the applicant and the legal description of the property within which the natural landscape area will be located, if permitted.
 - ii. The name and address of the landscape architect, designer, or contractor being used, if applicable.
 - iii. A statement of intent and purpose for the property.
 - iv. A site plan for the area sought to be permitted with all buildings, paved areas, immediately adjacent properties, public streets, and alleys clearly labeled, and location of all existing and proposed landscaping. Natural landscape areas must adhere to the following buffer or buffer strip requirements:

1. A buffer or buffer strip of the natural landscaped area not less than thirty (30) inches from any and all property lines, public streets, sidewalks, and alleys.
 2. All buffers or buffer strips areas must be maintained to a height of less than nine (9) inches in height and kept free of turf grass, weeds, rank vegetation, and/or noxious weeds.
 3. Any plantings within intersection sight triangles must be maintained to a height of less than thirty (30) inches at all times.
 4. A buffer or buffer strip requirements may be reduced if a fence at least four (4) feet in height is installed between the natural landscape area and the property line or if the natural landscape area is adjacent to a natural area, wooded area, identified wetland, stormwater pond, creek, stream or river corridor, conservation easement, or other approved area.
- v. A list including the common and botanical names, average plant size and quantities of all plant materials being installed.
- vi. A specific management and maintenance plan which shall include:
1. The estimated transition period.
 2. The elimination of non-native or invasive vegetation and turf grass.
 3. The replanting of the area by transplant or seeded by human or mechanical means.
 4. The maintenance of the area to be cut back to a height of no greater than nine (9) inches annually between April 15 - September 15.
 5. The maintenance of the area to a height of nine (9) inches or less if weeds cover more than twenty-five (25) percent of the native vegetation area.
 6. Erosion control measures to be taken while the ground is bare of plant growth.
- vii. Proof of mailed notification to all property owners who adjoin the subject parcel.
1. The Board of the Town of Roann may reasonably require mail notice to be given to additional persons.
- viii. No plantings are allowed within any drainage utility easement, road right-of-way or conservation easement without additional approvals by the Town of Roann.
- ix. The maintenance standard in this section applies to property that has been developed with a building as defined in the building code, including vacant property combined with developed property for tax purposes, and a parcel of property that has been completely or partially disturbed by demolition, grading or other means in preparation for development or redevelopment.

- b. Proposed land management plans will be reviewed and evaluated based upon the following criteria:
 - i. Compatibility with adjacent properties, streets, alleys, and right-of-ways;
 - ii. Preservation of existing plant communities;
 - iii. Limitation of the area of lawn grass;
 - iv. Landscaping and site development which retains storm water runoff;
 - v. Utilization of plant materials which are well suited to the characteristics of the property; and
 - vi. Elimination of noxious weeds, rank vegetation, turf grass, and/or weeds.
- c. If the naturalized landscape area consists of herbaceous, annual, biennial, or perennial plants that tend to have stems or grasses that die down to ground level after the growing season, the area shall be mowed no less than once per year. If only mowed once during the year, mowing shall take place between April 1 and May 15 each year.

11. Approval, Denial, and Revocation of Natural Landscape Permits

- a. **Approval** - the Board of the Town of Roann, along with the Superintendent and Town Marshal, shall determine the completeness of the application and shall issue the Natural Landscape Permit unless:
 - i. The management and maintenance plan are incomplete or inconsistent with the application requirements; or
 - ii. The transition period for the area is longer than three (3) growing seasons.
- b. **Denial** - any person whose application for a Natural Landscape Permit is denied shall receive written notice of such denial and may appeal that determination to the Board of the Town of Roann in the manner set forth in section 12 herein. If the Board of the Town of Roann determines that the applicant has complied with the application provisions of this section, including the management and maintenance plan requirements, it shall direct the Town Marshal to issue the Natural Landscape Permit.
 - i. A petition received by the Board of the Town of Roann executed by three (3) or more property owners entitled to the mail notice in section 10(a)(vii).
- c. **Revocation** - a Natural Landscape Permit may be revoked by the Board of the Town of Roann, Town Marshal, or authorized designee, for any of the following reasons:
 - i. Weeds are present that do not conform to this ordinance.
 - ii. Buffer or buffer strips are not maintained.
 - iii. Vegetation within required buffer or buffer strips listed above in section 10 (a)(iv)(1) are not maintained to a height of less than nine (9) inches.
 - iv. The permittee fails to maintain the natural landscape in a manner consistent with the management and maintenance plan included in the application.

- v. A petition received by the Board of the Town of Roann executed by three (3) or more property owners entitled to the mail notice in section 10(a)(vii), upon showing by said responsible party that there has been a failure to adhere to the criteria listed in section 10(a)(iv) or any conditions placed upon the property by the Board of the Town of Roann during the approval process, or upon showing that:
 - 1. The natural landscape plan will be injurious to the public health, safety, morals, or general welfare of the community or neighborhood; or
 - 2. The use and value of the area adjacent to the property or within a sight line to the natural landscape area will be affected in a substantially adverse manner.
- d. The notice of revocation shall indicate that the revocations shall be effective on the date identified therein, which date shall be not less than seven (7) calendar days later than the date of the notice, unless the permittee files a written appeal to the Town in the manner set forth herein. If the Town determines that the permittee has failed to abide by the provisions of this section and the approved Natural Landscape Permit, it shall direct the Town Marshal to issue a noxious weeds, rank vegetation, turf grass, and/or weed violation notice pursuant to the provisions of section 4.

12. Natural Landscape Permit Appeal

- a. Any person aggrieved by the denial of a Natural Landscape Permit, or the revocation of a permit may appeal per section 8. Said notice must be filed to the Roann Town Hall within twenty (20) days of the action causing the appeal.

13. Notice of Noncompliance

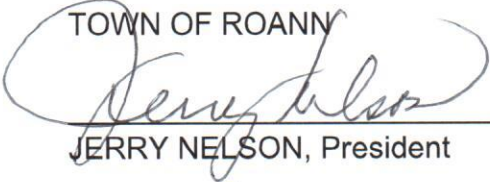
- a. In the event the owner of any property permits a noxious weeds, rank vegetation, turf grass, and/or weeds nuisance to exist in violation of the provisions of section 2 herein, the nuisance shall be abated according to the provisions of section 5.

14. 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 IC 36-7-10.1-5
- d. This ordinance shall supersede and cause to be repealed Roann Town Ordinance 9-2016 - Weed and Rank Vegetation Control Ordinance.

This ordinance shall be in full force and effect from and after its passage by the Board of the Town of Roann.

Dated this 8th day of July, 2024.

TOWN OF ROANN


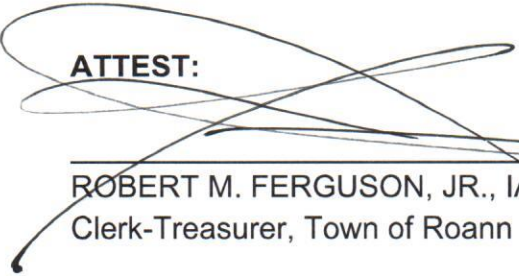
JERRY NELSON, President



NEIL BEVER, Board Member



JEREMY FISHER, Board Member

ATTEST:


ROBERT M. FERGUSON, JR., IAMC, IAMCA, CMC, CMO
Clerk-Treasurer, Town of Roann