

ORDINANCE NO. 16-4

AN ORDINANCE governing Nuisances.

WHEREAS, The Town of Sharpsville, Indiana, (hereinafter "The Town"), under the authority pursuant to Indiana Code 36-8-2-4, wishes to adopt Ordinance Number 2016- __, replacing all previously enacted Nuisance Ordinances, requiring owners of to prevent nuisances, and regulating the conduct, use or possession of property that might endanger the public health, safety, or welfare, the Town hereby adopts said Ordinance to read as follows:

WHEREAS, The Town has the authority under Indiana Code 36-8-2-4 to regulate the conduct, use, or possession of property that might endanger the public health, safety, or welfare; and,

WHEREAS, The Town deems that nuisances constitute a danger to the public health, safety and welfare; and,

BE IT, THEREFORE, ORDAINED as follows:

Sect. 1: DEFINITIONS.

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

"ENFORCEMENT AUTHORITY OR OFFICER." The Town Marshall, its deputies, Town Employees, and those appointed by the Town board for such purposes, including a code enforcement officer.

"LITTER." Includes any man-made or man-used waste, which, if deposited within the town 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." Defined as set out in IC 32-30-6-6, to-wit: whatever is injurious to health; indecent; offensive to the senses; or an obstruction to the free use of property; or so as essentially to interfere with the comfortable enjoyment of life or property.

"OF RECORD." Recorded in the records of the recorder of Tipton County, Indiana, or in the records of the auditor of Tipton County, Indiana.

"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 yards, grounds, walks, driveways, fences,

(F) No person shall deposit any contaminated recyclable materials in or at any city, county or Recycling facility or container intended for collecting recyclable materials.

(G) No person shall conduct scavenging of materials at any facility or in any container intended for collecting recyclable materials.

(H) No person, either knowingly or unknowingly, shall contract with another party to engage in any acts prohibited by divisions (A) through (G) of this section. A violation of this division (H) shall be an offense of the same degree for the waste generator as the violation committed by the hired contractor.

(I) No person shall store, accumulate or allow to remain on any private property, any abandoned vehicles, automobile parts, disassembled automobiles, automobiles without engines, plumbing and piping materials and parts, scrap metal, unseaworthy or dilapidated boats, dilapidated, deteriorated, or non-operable jet skis, snowmobiles, bicycles, trailers, mopeds or junk, unless properly approved.

(J) No person shall store, accumulate, or allow to remain, on any private property, appliances, household items, or tires outside of any structure.

(K) No person shall have 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, other than for the purpose of approved forms of composting.

Sect. 3: NUISANCES DESCRIBED.

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

- (1) Littering or unapproved or illegal dumping.
- (2) Accumulations of rubbish, trash, refuse, junk, or other abandoned, dismantled, discarded materials, metals, or lumber.
- (3) Fallen trees, stumps, dead trees, cut brush, fallen or cut limbs, except stacked firewood.
- (4) Boxes, appliances, household items, and tires.
- (5) Construction or demolition remains, including, but not limited to Any discarded construction or demolition materials including but not limited to, lumber, wood, paneling, dry

a safety or health hazard.

(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.

(22) Fences and walls on commercial or industrial properties that are not maintained to community standards, in a state of disrepair and/or a danger to the public.

(23) Exterior lighting fixtures on commercial or industrial structures and/or lighting fixtures in the parking lot surrounding commercial or industrial structures that are broken, non-functioning, burned out and/or are insufficient in number or brightness to provide for the safety and security of employees or patrons of the commercial or industrial establishment.

(24) Paint, siding, shingle, stucco, wood or any other exterior covering on commercial or industrial structures that is chipping, flaking, missing, decayed, in disrepair, or detached from the exterior of the structure, including fill material such as soil, clay, shale, gravel, sand, or concrete.

(25) Contaminated materials, including un-rinsed containers with food or product residues, non-container glass materials, materials with contained oils, pesticides, fertilizers, herbicides, poisons, or other hazardous materials, materials fouled with dirt or other substances foreign to their original contents or composition, wet or saturated newspapers, and any other condition which renders the materials un-recyclable, household hazardous wastes, used automotive fluids or parts, solvents, and other potentially hazardous wastes or chemicals, including any capable of transmitting communicable disease.

The time allowed must allow a sufficient time - unless an emergency or safety issues exists - of at least ten (10) days from the time the abatement notice is served, to accomplish the required action. If the notice allows more than thirty (30) days to accomplish the action, the notice may require that a substantial beginning be made in accomplishing the action within the initial thirty (30) day period following service of the notice. Under no circumstances shall the time to correct the nuisance exceed sixty (60) days.

(6) A statement that the order becomes final ten (10) 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 (10) calendar day period.

(7) A statement briefly indicating what action can be taken by the town if there is non-compliance with the orders contained in the abatement notice.

(8) The name, business address, and business telephone number of the enforcement authority.

(9) A statement informing the right to request a hearing/appeal and the timeline for making said request/appeal.

(10) A description of the penalties, consequences, and costs if the violation is not corrected in the allotted time, including information that the costs of abatement may be assessed against the property.

(D) **Manner of giving notice.** Service of abatement notices shall be made by any of the following means:

(1) 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.

(2) Personal hand delivering a copy of the notice with an affidavit of service returned.

(3) Posting a copy of the notice in a prominent place upon the premises where the nuisance is located and returning an affidavit of said posting and mailing a copy of the notice by first class mail to the last known address of the person to whom notice must be

nuisances such as refrigerators with doors left accessible, uncovered swimming pools, or dead tree limbs subject to falling on the sidewalk.

Sect. 7: Warning Violations.

A code enforcement officer may determine that a warning violation should be issued to provide an incentive and an opportunity to undertake abatement measures. A Warning Violation is a courtesy only and not a right and is not to act as a prerequisite to the issuance of a notice of abatement order.

Sect. 8: APPEALS AND HEARINGS.

(A) 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 enforcement authority 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.

(B) Upon receipt of the written request for a hearing, the enforcement authority shall place the matter on the agenda of the Sharpsville Town Board for hearing. The Sharpsville Town Board shall function as hearing body to adjudicate the matter.

(C) The enforcement authority 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 ten (10) calendar days prior to the date set for the hearing.

(D) At the hearing, which may be adjourned from time to time, it shall be the town's burden to go 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.

(E) At the hearing, both sides may present witnesses, elicit testimony, introduce physical evidence, cross-examine opposing witnesses or dispute evidence submitted

abatement notice was served liable to a fine as set forth in this ordinance. 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 chapter. 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.

Sect. 11: ABATEMENT BY TOWN.

(A) In addition to fines imposed under this ordinance, in non-emergency situations where abatement is not accomplished immediately by the town, the 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 Sharpsville Town Board 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 Tipton County, Indiana, to give constructive notice to subsequent purchasers that the real estate is subject to the costs associated with the abatement.

(B) Work may be accomplished with town 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. The basis for calculation of abatement costs shall be on an hourly basis and shall be based on man hours unless machine hours are also needed. Any costs for contracted work will be consistent with the costs of performing the abatement by contract. An accurate accounting shall be kept of all costs incurred in abating the nuisance.

(C) 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 thirty (30) 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.

(D) Any judgment for costs obtained shall be filed as a judgment lien against the real estate upon which the nuisance was abated. Additionally, costs of abatement may be placed on the property owner's tax bill as a special assessment by the County Auditor after having been provided: (1) a copy of the Abatement Notice and any Continuous Abatement Notice, (2) copies of all sent invoices, and (3) an affidavit from the Town Clerk-Treasurer official verifying that that the invoice remains unpaid.

(5) Either abatement of the violation or a request for appeal must be filed with the Sharpsville Town Board within the time frame designated in the notice for the identified person or property owner to dispute fines, an order to appear, or other legal action.

All ordinances, or parts of ordinances, in conflict herewith are hereby amended. The invalidity of any section, clause, sentence or provision of this ordinance shall not affect the validity of any other part of this ordinance which can be given effect without such invalid part or parts;

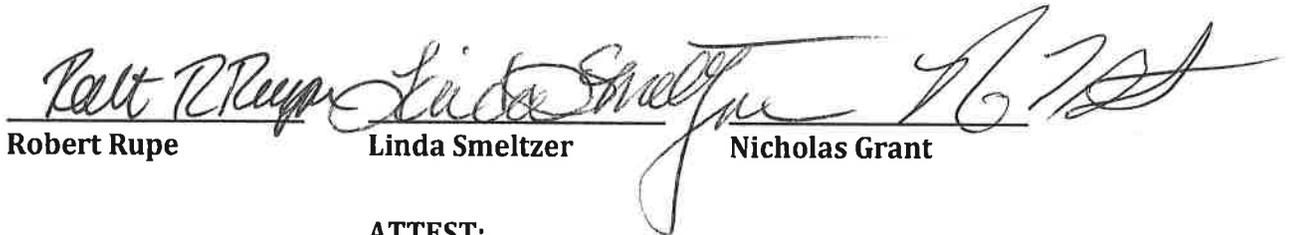
This Ordinance, pursuant to I.C. 36-2-4-8, shall be in force and effect from and after its passage by Town Board of The Town and its publication in an appropriate newspaper for two (2) consecutive weeks.

First Reading
SO ORDAINED this 15th day of December, 2016.

Second Reading 1/12/17 - adopted 1/12/17

THE TOWN OF SHARPSVILLE,

BY:


Robert Rupe Linda Smeltzer Nicholas Grant

ATTEST:


Bernice J. Farris
Clerk-Treasurer