

ORDINANCE NO. 2007-04-02

**AN ORDINANCE AMENDING AND RESTATING ORDINANCE 6-8.1-93
PROVIDING FOR THE ABATEMENT AND REMOVAL OF PUBLIC
NUISANCES WITHIN LAGRANGE COUNTY**

WHEREAS, in areas of LaGrange County, Indiana public nuisances are, or may in the future be, detrimental to the public health, safety, welfare and comfort of the citizens of LaGrange County; and

WHEREAS, public nuisances have been demonstrated as affecting and interfering with the enjoyment of and reducing the value of private property by promoting the following: vandalism, the presence of vermin, creation of fire hazards and other safety and health hazards to children and adults, interference with the comfort and well-being of the public, and creation, extension and aggravation of blight; and

WHEREAS, adequate protection of the public health, safety, welfare and comfort requires that public nuisances be regulated, prohibited and abated; and

WHEREAS, I.C. 36-8-2-4 allows local governments to regulate conduct, use or possession of property that might endanger the public health, safety, or welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE LAGRANGE COUNTY COMMISSIONERS OF THE COUNTY OF LAGRANGE, STATE OF INDIANA THAT ORDINANCE 6-8.1-93 BE AMENDED AND RESTATED AS FOLLOWS:

SECTION I – DEFINITIONS

A. Department: The LaGrange County Planning and Zoning Department has been designated and assigned as the County department responsible for the abatement and removal of public nuisances within areas of the County of LaGrange, Indiana and granted all powers reasonable and necessary for the performance of its responsibilities under this Ordinance.

B. Junk Vehicles: Any motor vehicle or non-motor vehicle that is either disassembled, non-operative, wrecked, or does not bear a currently valid license plate, or would be considered “junk” by a reasonable person, and is not in a garage or other building, but is kept in open view upon public or private property. A person may rebut a determination by the LaGrange County Zoning Enforcement Officer (“Enforcement Officer”) that a car, pickup truck, bus, semi-truck, recreational vehicle, or motorcycle is a junk vehicle by driving such a vehicle, under the vehicle’s own power, to the office of the Enforcement Officer with valid tags and proof of registration.

C. Junk Non-Motor Vehicles: Includes, but is not limited to, semi trailers, boats, non motorized recreational vehicles and trailers of any kind.

D. Motor Vehicles: Includes, but is not limited to, cars, pickup trucks, buses, semi-trucks, golf carts, all-terrain vehicles, motorized recreational vehicles, boats and motorcycles. Agricultural machinery located on land properly zoned and owned by persons actively engaged in farming shall be exempt from this Ordinance.

E. Public Nuisances: Public nuisances are defined in accordance with I.C. 36-8-2-4 and may include, but is not limited to, the following:

1. Litter;
2. Grass and weeds over twelve (12) inches high, but not including small trees and bushes;
3. Boxes, appliances, furniture, household items and tires, etc., but not stock or inventory used in conducting agricultural activities in a properly zoned area;
4. Demolition remains;
5. Accumulated garbage and trash;
6. Vehicle parts and scrap metal (including but not limited to those defined at I.C. 9-22-1-1 et seq.);
7. Structures defaced with paint or graffiti;
8. Any wastewater, filth, offal, garbage, rubbish, human excrement, which is deposited, allowed or caused to be upon any public or private property;
9. The construction of, or the placement of any structure or materials within the drainage way of any right of way that will prevent the natural flow of water and cause it to collect and pool upon any private or public property;
10. Any dead domestic or wild animal;
11. Any real or personal property that is infected with contagious disease and is likely to cause an immediate health hazard;
12. The placing or accumulating on or within any real or personal property or the permitting of same, of any matter which attracts or may attract rodents, insects, domestic or wild animals in such a manner as to create a health hazard or unsanitary or dangerous condition;
13. Trees, shrubbery, weeds, or other matter obstructing public ways, or causing visual barriers which create vehicular traffic or pedestrian safety hazards;
14. The unauthorized placement of fences, signs, shrubbery or barriers within the county road right of ways;
15. Junk vehicles as defined by this Ordinance, due to the danger to public health from vermin and insects that inhabit such vehicles, and the danger to safety of children attracted by such vehicles, except in lawfully operated junkyards that have been properly zoned and licensed;
16. Industrial machinery, unless located on land that is properly zoned for such use and owned by persons actively engaged in industry.

SECTION II - NOTICE

A. The Department shall issue an order requiring remedial action to be taken relative to the removal of a public nuisance. The ordered action must be reasonably related to the

condition constituting the public nuisance. Said order must be given in accordance with Section III of this Ordinance. The order must contain:

1. The name of the person to whom the order is issued; and
2. The address or the tax parcel number of the property that is the subject of the order; and
3. The action the order requires; and
4. The period of time in which the action is required to be accomplished, measured from the time when the notice of the order is given; and
5. A statement indicating that if the order is not complied with by the expiration of the time period, a hearing before the LaGrange County Commissioners, or their designee, (the "Enforcement Board") will be scheduled, and that the person to whom the order was issued shall be entitled to appear at the hearing with or without legal counsel, present evidence, cross examine opposing witnesses and present arguments; and
6. A statement briefly indicating what action can be taken by the Department if this order is not complied with; and
7. A statement indicating the obligation created by this Ordinance relating to notification of subsequent interest holders and enforcement authority; and
8. The name, address and telephone number of the Department.

SECTION III – SERVICE OF NOTICE

A. Methods of Service: Notice of orders, notice of continued hearings, notice of a statement that public bids are to be let, and notice of claims for payment must be given by either:

1. Sending a copy of the order or statement by registered or certified mail to the residence or place of business or employment of the person to be notified, with return receipt requested; or
2. Delivering a copy of the order or statement personally to the person to be notified; or
3. Leaving a copy of the order or statement at the property or usual place of residence of the person to be notified.

When service is made by any of the means described, 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 Department.

B. Service Not Obtained: If, after a reasonable effort, service is not obtained by means described above, service may be made by publishing a notice of the order or statement in the LaGrange News and the LaGrange Standard. Publication may be made on consecutive days. If service of an order is made by publication, the publication must include the information required by Section II of this Ordinance and must also include a statement indicating generally what action is required by the order and that the exact terms of the order may be obtained from the Department.

C. Effective Date: The date when notice of the order or statement is considered given is as follows:

1. If the order or statement is delivered personally or left at the dwelling or usual place of residence, 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 residence.
2. If the order or statement 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 Department.
3. Notice by publication is considered given on the date of the second day that publication was made.

SECTION IV – HEARING

A. A hearing must be held relative to each order of the Department that is not complied with. The Enforcement Board shall conduct the hearing.

B. The hearing shall be held on a business day no earlier than ten (10) days after notice of the order is given.

C. The person to whom the order was issued, any person having a substantial property interest in the property that is the subject of the order, or any other person with an interest in the proceedings may appear in person or by counsel at the hearing. Each person appearing at the hearing is entitled to present evidence, cross-examine opposing witnesses, and present arguments.

D. At the conclusion of any hearing where a continuance is not granted, the Enforcement Board shall make findings and take action to:

1. Affirm the order; or
2. Rescind the order; or
3. Modify the order, but unless the person to whom the order was issued, or counsel for that person is present at the hearing, the hearing authority may modify the order in only a manner that makes its terms less stringent.

E. The record of the findings made and action taken by the Enforcement Board at the hearing shall be made available to the public upon request. However, neither the Department nor the Enforcement Board shall be required to give any person notice of finding and action.

SECTION V – JUDICIAL REVIEW

A. An action taken under Section IV of this Ordinance is subject to review by the circuit or superior court of the County where the property is located, on the request of:

1. Any person who has a substantial property interest in the property that is the subject of the public nuisance order; or
2. Any person to whom the order was issued.

B. A person requesting judicial review under this Section must file a verified complaint with a court having jurisdiction in this matter, including the findings and the action taken by the Enforcement Board. The complaint must be filed within ten (10) days of the Enforcement Board's official action.

C. An appeal under this section is an action de novo. The court may affirm, modify, or reverse the action taken by the Enforcement Board.

SECTION VI – ENFORCEMENT OF ORDER

A. Removal of Nuisances Other Than Junk Vehicles

The Department may cause the action required by an order to be performed by County personnel or a private contractor if:

1. An order has been issued to each person having a substantial property interest in the property housing the public nuisance; and
2. The Enforcement Officer has made reasonable efforts to provide service in a manner prescribed by Section III of this Ordinance to each person having a substantial interest in the property that is the subject of the order; and
3. The Enforcement Board has affirmed or modified the Order at the hearing; and
4. The order as affirmed or modified at the hearing, has not been complied with; and
5. The order is not being reviewed under Section V of this Ordinance.

The work required by an order of the Department may be performed in the following manner:

1. If the estimated cost of the work is less than five thousand dollars (\$5,000) the Department may perform the work by means of its own workers and equipment owned or leased by it. The work may also be performed by a private contractor based on quotations received from a list of contractors approved to do such work by the LaGrange County Board of County Commissioners.

2. If the estimated cost of work is five thousand dollars (\$5,000) or more this work must be let at public bid to a qualified contractor.

Notices of work to be performed must be given to all persons with a substantial interest in the property housing the nuisance at least ten (10) days prior to the performance of the work. This notice must include a statement that an amount representing a reasonable estimate of cost incurred by the Department in processing the matter and performing the work, if not paid, will be recorded as a lien against all persons having a fee interest or life estate interest in the property. If action is being taken under this section on the basis of an order that was served by publication, it is sufficient to serve the statement that the Department intends to perform work by publication.

B. Removal of Junk Vehicles

The Department may remove junk vehicles located on private property pursuant to an order if:

1. An order has been issued to each person having a substantial interest in the property housing the junk vehicle and to the owner of the junk vehicle, if known; and

2. The Enforcement Officer has made reasonable efforts to provide service in a manner prescribed by Section III of this Ordinance to each person having a substantial interest in the vehicle and the property that is the subject of the order; and
3. The Enforcement Board has affirmed or modified the order at the hearing; and
4. The order as affirmed or modified at the hearing, has not been complied with; and
5. The order is not being reviewed under Section V of this Ordinance.

Notices of the removal of junk vehicles must be given to all persons with a substantial interest in the property housing the junk vehicle, and the owner of the junk vehicle, if known, at least ten (10) days prior to the performance of the work. This notice must include a statement that an amount representing a reasonable estimate of the cost incurred by the Department in processing the matter and performing the work, if not paid, will be recorded after a hearing as a lien against all persons having a fee interest or life estate interest in the property. If action is being taken under this section on the basis of an order that was served by publication, it is sufficient to serve the statement that the Department intends to perform the work by publication.

The removal of a junk vehicle by order of the Department may be performed in the following manner:

1. The Enforcement Officer shall cause the vehicle to be towed to a storage area.
2. Within seventy-two (72) hours after removal of a junk vehicle to a storage area, the Enforcement Officer shall forward to the Bureau of Motor Vehicles (“Bureau”) a vehicle report containing the make, model, identification number, license plate number, and any other description of the vehicle. The vehicle report should contain a request that the Bureau advise the Enforcement Officer of the name and most recent address of the person who owns or holds a lien on the vehicle.
3. The Enforcement Officer shall then by first class mail, notify the person who owns the vehicle, if known, with a copy to each person who holds a lien on the vehicle that the vehicle has been towed (the “Notice of Towing”). Said Notice of Towing should indicate that the vehicle has been towed and impounded at a certain location and must be removed within thirty (30) days after the date of the mailing of the Notice of Towing and advise that the vehicle will be disposed of after that time. The Notice of Towing should also advise the person who owns or holds a lien on the vehicle that all costs incurred in removing and storing the vehicle are the person’s legal responsibility.

C. Exceptions

This Ordinance does not apply to:

1. A vehicle in operable condition specifically adapted or constructed for operation on a privately owned raceway; or
2. A vehicle stored as the property of a member of the armed forces of the United States who is on active duty assignment; or
3. A vehicle located on a vehicle sale lot or at a commercial vehicle servicing facility;
4. A vehicle located upon property licensed or zoned as an automobile storage or impound yard; or

5. A vehicle registered and licensed under I.C. 9-7-6-1 to 9-7-6-6 as an antique vehicle.

SECTION VII - COSTS OF REMOVAL

A. Costs for Removal of Nuisances other than Junk Vehicles.

When action required by an order is performed by the Department or by a contractor acting under this Ordinance, each person who holds a fee interest or life estate interest in the cited property from the time when the order requiring the work performed was recorded to the time that the work was completed is jointly and severally responsible for the following costs:

1. The actual cost of the work performed by the Department and/or the bid price of work accomplished by the contractor; and
2. The administrative cost to process an order that was performed by the County, including but not limited to the following: cost to determine persons with substantial property interest, cost of notices, cost to secure bids, cost of hearings, Enforcement Officer wages, salaries of employees, and any cost of paper, office supplies and office area.

If all or any part of the costs incurred under this Ordinance remain unpaid for any public nuisance property for more than thirty (30) days after the completion of the work, the Department shall prepare a record stating:

1. The name and last known address of each person who held a fee interest or life estate interest in the cited property from the time the order requiring the work to be performed was recorded to the time that the work was completed; and
2. The legal description, address or parcel number of the cited property that was the subject of work; and
3. The nature of the work that was accomplished; and
4. The total cost of the work that was accomplished.

The Enforcement Officer shall swear to the accuracy of the above stated record before the clerk of the circuit court and deposit the record in the clerk's office. Notice that the record has been filed and that a hearing on the amounts indicated in the record may be held must be sent to the persons named in the record, in the manner prescribed by Subsection II of this Ordinance.

If, within (30) days after the notice required above, a person named in the record files with the clerk of the circuit court a written petition objecting to the claim for payment and requesting a hearing, the clerk shall enter the cause on the docket of the circuit or superior court as a civil action, and a hearing shall be held on the question.

Issues that could have been determined under Section IV of this Ordinance may not be entertained at this hearing. At the conclusion of the hearing, the court shall either sustain the petition or enter a judgment against the persons named in the record for the amounts recorded or for modified amounts.

If no petition is filed, the clerk of the circuit court shall enter the cause on the docket of the court and the court shall enter a judgment for the amounts stated in the record. A judgment entered shall become a lien on the property housing the nuisance.

The Enforcement Officer shall record documentation with the County Recorder that states:

1. The name or names of the owner(s) of the property housing the nuisance; and
2. A description of the property, as shown on the records of the County Auditor; and
3. The amount of the delinquent fees.

The amount of the lien shall be placed on the tax duplicate by the auditor and shall be collected in the same manner as delinquent taxes are collected.

Judgments rendered under this Ordinance may be enforced in the same manner as all other judgments are enforced.

B. Costs for Removal of Junk Vehicles.

When action to remove a junk vehicle required by an order is performed by the Department or by a contractor acting under this Ordinance, each person who holds a fee interest or life estate interest in the cited property from the time when the order requiring the work performed was recorded to the time that the work was completed, as well as the owner of the vehicle, is jointly and severally responsible for the following costs:

1. The actual cost of the work performed by the Department and/or the bid price of work accomplished by the contractor to remove and store the vehicle; and
2. The administrative cost to process an order that was performed by the County, including but not limited to the following: cost to determine persons with substantial property interest, cost of notices, cost to secure bids, cost of hearings, Enforcement Officer wages, salaries of employees, and any cost of paper, office supplies and office area.

If the properly identified person who owns or holds a lien on a vehicle appears at the storage site within thirty (30) days after the mailing of the Notice of Towing and pays all costs incurred against the vehicle at that time, the vehicle shall be released. The Enforcement Officer shall notify the Bureau of all releases. Each release shall state the name, signature and address of the person who owns or holds a lien on the vehicle or parts, a description of the vehicle, the costs, and the date of release.

If the person who owns or holds a lien upon the vehicle does not appear within thirty (30) days after the mailing of the Notice of Towing, the Enforcement Officer may sell the vehicle:

1. To the highest bidder at a public sale. Notice of the sale shall be given by publication in one newspaper one week before the sale.
2. The vehicle may be disposed of without notice if the vehicle is in such a condition that the vehicle identification numbers or other means of identification are not available to determine the person who owns or holds a lien on the vehicle.

The proceeds from the sale of a junk vehicle shall be applied to costs of removal, storage, and administrative costs. Any remaining proceeds shall be remitted to the vehicle owner. If all or any part of the costs incurred under this Ordinance remain unpaid for more than thirty (30) days after the completion of the work, the Department shall prepare a record stating:

1. The name and last known address of each person who held a fee interest or life estate interest in the property housing the junk vehicle from the time the order requiring the work to be performed was recorded to the time that the work was completed, as well as the owner of the vehicle; and
2. The legal description, address or parcel number of the cited property that was the subject of work; and
3. The nature of the work that was accomplished; and
4. The total cost of the work that was accomplished.

The Enforcement Officer shall swear to the accuracy of the above stated record before the clerk of the circuit court and deposit the record in the clerk's office. Notice that the record has been filed and that a hearing on the amounts indicated in the record may be held must be sent to the persons named in the record, in the manner prescribed by Subsection II of this Ordinance.

If, within thirty (30) days after the notice required above, a person named in the record files with the clerk of the circuit court a written petition objecting to the claim for payment and requesting a hearing, the clerk shall enter the cause on the docket of the circuit or superior court as a civil action, and a hearing shall be held on the question.

Issues that could have been determined under Section III of this Ordinance may not be entertained at this hearing. At the conclusion of the hearing, the court shall either sustain the petition or enter a judgment against the persons named in the record for the amounts recorded or for modified amounts.

If no petition is filed, the clerk of the circuit court shall enter the cause on the docket of the court and the court shall enter a judgment for the amounts stated in the record.

A judgment entered shall become a lien on the property housing the nuisance.

The Enforcement Officer shall record documentation with the County Recorder that states:

1. The name or names of the owner(s) of the property housing the nuisance; and
2. A description of the property, as shown on the records of the County Auditor; and
3. The amount of the delinquent fees.

The amount of the lien shall be placed on the tax duplicate by the auditor and shall be collected in the same manner as delinquent taxes are collected.

A judgment entered shall become a lien on the property housing the nuisance.

SECTION VIII – NOTICE NOT REQUIRED

Notice of orders, notice of continued hearings, and notice of a statement that public bids are to be let need not be given to a person holding a property interest in an unabated public nuisance if:

1. No instrument reflecting the property interest held by the person is recorded in the recorder's office of the county where the public nuisance is located; or
2. The Enforcement Officer has received neither written information nor actual notice of the identity of the person who holds a property interest in the public nuisance.

A person who fails to record an instrument reflecting an interest in property subject to an order is considered to consent to action taken under this Ordinance relative to which notice would otherwise be given.

SECTION IX – RECORDING

The enforcement authority shall record in the office of the county recorder orders issued under this Ordinance, statements of rescission, and records of action taken by the hearing authority under this Ordinance. The recorder may not charge a fee for recording these items.

SECTION X - TRANSFER OF PROPERTY

A person who has been issued and has received notice of an order relative to a public nuisance and has not complied with that order:

1. Must supply full information regarding the order to a person who takes or agrees to take a substantial property interest in the cited property before transferring or agreeing to transfer that interest; and
2. Must, within five (5) days after transferring or agreeing to transfer a substantial property interest in the cited property supply the enforcement authority with written copies of the full name, address, and telephone number of the person taking a substantial property interest in the cited property; and the legal instrument under which the transfer or agreement to transfer the substantial property interest is accomplished.

SECTION XI - CONFLICT OF LAW

No part of this Ordinance shall be interpreted to conflict with federal, state, or local laws, and all reasonable efforts should be made to harmonize the same. Should any section or part thereof of this Ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the Ordinance as a whole, or any portion thereof other than that portion so declared to be invalid, and for this purpose the provisions of this Ordinance are hereby declared to be severable.

SECTION XII - AFFECT

The express or implied repeal or amendment by this Ordinance of any other Ordinance or part of any other Ordinance does not affect any rights or liabilities accrued, penalties incurred, or procedures begun prior to the effective date of this Ordinance. Those rights, liabilities, and proceedings are continued, and penalties shall be imposed and enforced under the repealed or amended Ordinance as if this Ordinance had not been adopted.

SECTION XIII - PASSAGE

Unless otherwise set forth herein, this Ordinance shall become effective upon promulgation according to law.

Ayes: _____

Nays: _____

Abstentions: _____

Adopted and Ordained this _____ day of _____,
2007.

BOARD OF COMMISSIONERS OF THE
COUNTY OF LAGRANGE

George R. Bachman, President

Phillip D. Curtis, Vice-President

Roger W. Boots, Member

ATTEST:

Jackie S. Boyle, Auditor

WAIVER OF SECOND READING

On motion duly made and seconded, the second reading of the foregoing Ordinance was unanimously waived and the Ordinance was deemed effective as of the date of passage.

BOARD OF COMMISSIONERS OF THE
COUNTY OF LAGRANGE

George R. Bachman, President

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Roger W. Boots, Member

ATTEST:

Jackie S. Boyle, Auditor

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