

ORDINANCE NO. 2019-01
Adopted March 18, 2019

**THE DUBOIS COUNTY
PROPERTY MAINTENANCE ORDINANCE**

WHEREAS, the Board of Commissioners of Dubois County, State of Indiana, desire to provide for the public health, welfare and safety of the citizens of Dubois County by reducing the trash, junk, weeds and storage of abandoned/junk vehicles within Dubois County.

NOW, THEREFORE, be it Ordained and Enacted by the Board of Commissioners of Dubois County, State of Indiana, as follows:

TITLE: This Ordinance and all Ordinances supplemental or amendatory hereto shall be known as the Property Maintenance Ordinance and may be cited as such and will be referred to herein as "this Ordinance."

AUTHORITY: The following shall be authorized enforcement agents in the enforcement of this ordinance within the unincorporated areas of Dubois County, Indiana: Law Enforcement Officials serving in Dubois County, Dubois County Health Department, Dubois County Highway Department, Dubois County Solid Waste Management District and their representatives/agents are hereby authorized to investigate violations and to perform all actions necessary for the enforcement and administration of this ordinance and will be referred to as "Enforcement Agents." Enforcement Agents to be charged with primary responsibilities for investigation and enforcement as follows: Dubois County Solid Waste Management District for junk, abandoned/junk vehicles, litter and trash; Dubois County Highway Department for weeds; Dubois County Sheriff's Department for abandoned and/or junk vehicle violations on public right of way or public property.

Section 1 DEFINITIONS

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

1.0 "Abandoned/Junk Vehicle" means the following:

- (a) Any vehicle that has remained on private property without the consent of the owner or person in control of that property for more than forty-eight (48) hours, or
- (b) A vehicle that is mechanically inoperable or incapable of movement by its own locomotion, and that is not being held for or which is under repair, to be completed within next 20 days, or
- (c) Vehicles without a valid current state registration and license plate and left on private property continuously in a location visible from public property for more than twenty (20) days.

1.1 “Accumulate” – as pertains to junk and trash means any one of the following: 1) Improperly collecting junk and trash in an inappropriate storage container; or 2) collecting junk and trash in an accumulation greater than three (3) cubic yards.

1.2 “Complaint” – written communication on the County’s designated form, electronic or hard copy, to an Enforcement Agent addressing a violation of this Ordinance setting forth the nature and location of the violation, and containing the written or electronic signature and contact information of the reporting individual. Complaint forms shall be made available at the offices of Enforcement Agents and County Auditor, as well as the County’s website.

1.3 “Compost” – the product produced by the process of composting vegetative matter and other types of organic material.

1.4 “Composting” – the biological treatment process by which microorganisms decompose the organic components of vegetative matter and other types of organic material under controlled conditions to produce a usable product.

1.5 “County” – the County of Dubois, State of Indiana.

1.6 “Garbage” – the animal or vegetable waste resulting from the handling, preparation, cooking and consumption of food.

1.7 “Hearing Authority” – shall be the Dubois County Commissioners or any person(s) designated as such by the Commissioners under authority of I.C. 36-7-9-2.

1.8 “Highway or Road” – shall mean that portion of the State or County public highway or road system so designated on the General Highway and Transportation Map, as amended, which are maintained by the Indiana Department of Transportation or the Dubois County Highway Department.

1.9 “Junk” – refers to accumulation of combustible and non-combustible waste materials; the term shall include: paper; rags; tin; metals; residue from burning; household goods including, but not limited to, mattress, furniture, major appliances, clothing and other household items not intended for exposure to rain and other inclement weather. Trash is considered junk.

1.10 “Motor Vehicle Graveyard” – means any establishment, place of business or parcel of real estate which is maintained, used or operated for storing or keeping, at any one time in excess of two (2) non-operating, wrecked, scrapped, ruined or dismantled motor vehicles or parts thereof.

1.11 “Person” – means any person, firm, partnership, association, corporation, company or organization of any kind.

1.12 “Private Property” – shall mean all privately-owned property which is not classified within the definition of public property.

1.13 “Public Property” – shall mean any public right-of-way, street, highway,

alley, park or other state, county or municipally-owned property.

1.14 “Report” – shall have the same meaning as “Complaint”.

1.15 “Scrap Metal Processing Facility” shall mean an establishment having facilities for processing iron, steel, or nonferrous metal and whose principle product is scrap iron, steel or scrap for sale for smelting purposes.

1.16 “Second Violation”- a violation of this ordinance that is committed by a person within twelve (12) months of a previous violation.

1.17 “Sheriff” means the duly elected Sheriff of Dubois County or a duly appointed Deputy Sheriff of the Dubois County Sheriff’s Department.

1.18 “Standard Container”- Sturdy, tied plastic bags; durable metal, plastic, or similarly constructed container designed for the storage of trash. Food scraps and other household garbage that attracts animals and/or rodents must be placed in a vermin-proof and waterproof container with a tight-fitting lid.

1.19 “Substantial property interest” – means any right in real property that may be affected in a substantial way by actions authorized or prohibited in this ordinance, including fee interest, a life estate interest, a mortgage interest, or an equitable interest of a contract purchaser.

1.20 “Trash” – means anything worthless, useless or discarded; rubbish. Trash is considered “Junk”.

1.21 “Vehicle” – shall mean any motor vehicle, such as an automobile, motorcycle, truck, trailer, semitrailer, truck tractor, bus, school bus, motor home, recreational vehicle, house car or motor bicycle.

1.22 “Visible” - shall mean capable of being seen from any public roadway, right-of-way, or public property or from privately held real property.

1.23 “Weeds”- refers to any growth of vegetation, other than trees, bushes, shrubs, ornamental plants, or agricultural plants cultivated in an orderly manner for the purpose of producing food and/or feed.

Section 2 TRASH and JUNK

2.00 Trash and Junk.

2.1 No person may establish, operate, cause or maintain a junkyard, motor vehicle graveyard, or scrap metal processing facility or store or allow accumulation of junk on any real estate which is visible or deemed a public health nuisance, except for the following:

- (a) those which are screened by natural objects, plantings, fences or other appropriate means so as not to be visible
- (b) those located within areas which are zoned for industrial use under the authority of law of a municipal zoning ordinance
- (c) those located within non-zoned industrial areas as determined by the State Planning Agency and approved by the Secretary of the Department of Transportation.

2.2 It shall be a violation of this Ordinance for the owner, or anyone having a substantial property interest in real property, including open or vacant property, within Dubois County, to deposit or allow to remain on that real property any trash or junk, which items might provide food or harborage for insects, rodents, pests, or pose a fire safety hazard.

2.3 No person shall permit junk or trash to be situated on his or her property so that the material can be carried by wind, water or natural forces to any highway, right-of-way, easement, or to the property of any other person.

2.4 Nothing in this Ordinance shall be deemed to apply to County owned or operated recycling or State licensed salvage operations.

2.5 Nothing in this Ordinance shall be deemed to apply to established compost and composting.

2.6 Nothing in this Ordinance shall be deemed to apply to the use of standard containers or dumpsters for the temporary containment of trash or junk awaiting scheduled disposal. Trash that attracts animals or rodents must be placed in a vermin-proof and waterproof container with a tight-fitting lid. Such containers shall be constructed, handled, and placed in a way that will not promote a safety or health issue.

2.7 A person who recklessly, knowingly or intentionally places or leaves junk on a highway, road right of way or on the property of another person, commits littering. Evidence that littering was committed from a moving vehicle other than a public conveyance constitutes prima facie evidence that it was committed by the operator of the vehicle.

2.8 The provisions of this Ordinance are intended to and shall coexist with and supplement the provisions of County Ordinance 1990-12, relating to County Residential Solid Waste Containers.

Section 3 WEEDS

3.00 Weeds

3.1 Nothing in the Ordinance shall be deemed to apply to agricultural plants or crops, such as hay and pasture.

3.2 No owner or occupant of any lot or parcel of real estate located within the County shall permit said real estate to become overgrown with weeds. The following standards shall be the criteria used in determining that weed growth is detrimental to or threatens public health or safety:

3.2.1 Where the real estate is located in a platted subdivision containing two (2) or more residential structures, grass or other vegetation in excess of twelve (12) inches in height shall be considered weeds.

3.2.2 In all other areas within Dubois County, weeds, grass or other vegetation, excepting actively used agricultural crop land, in excess of twelve (12) inches in height shall be considered weeds where:

- (a) The real estate is located within fifty (50) feet of a county intersection;
- (b) The real estate is located within a county right-of-way
- (c) The real estate is located within one hundred fifty (150) feet of any residential structure located in Dubois County, or
- (d) The real estate is in such a condition that it creates a threat to public health safety as a result of rodent, insect, reptile or mosquito harborage.

Section 4 ABANDONED/ JUNK VEHICLES

4.00 Abandoned/Junk Vehicles.

4.1 It shall be unlawful for any person to keep, park or store any junk or abandoned vehicle(s) or parts thereof, on public or private property.

4.2 A vehicle shall not be considered an abandoned or junk vehicle if it is stored in a garage or other building or an opaque structure or within a fenced area which blocks the vehicle from being visible.

4.3 For purposes of this Ordinance, a vehicle covered by a tarpaulin or other plastic, vinyl, rubber, cloth, textile, or any other similar material covering is considered to be visible.

4.4 Nothing contained in this Ordinance shall be construed to apply to farm machinery, equipment or implements; unless the farm machinery, equipment or implement is mechanically inoperable or incapable of movement by its own locomotion, and that is not being held for or which is under repair, to be completed within six (6) months, or within such extended period as may be determined by the authorized enforcement agent.

4.5 Nothing contained in this Ordinance shall be construed to apply to vehicle(s) screened by natural objects or plantings (excluding weeds), fences or other appropriate means so as not to be visible.

Section 5 INVESTIGATION

5.00 Investigation.

5.1 The Authorized Enforcement Agent(s) shall receive and/or investigate a report or complaint. If the agent determines that another enforcement agent holds primary responsibility, the report/complaint shall be referred to that agent.

5.2 In the course of the investigation, the Authorized Enforcement Agent may seek assistance from any other Authorized Enforcement Agency, as needed to insure the safety and wellbeing of the investigating Authorized Enforcement Agent or Agency. An Authorized Enforcement Agent may use his or her discretion in initiating or continuing an investigation in the interest of his or her safety and wellbeing.

Section 6 NOTICE OF VIOLATION

6.00 Violations

6.1 Any person found to be in violation of any provision of this Ordinance, except for Section 2.7, shall receive a Notice of Violation. In the case of littering, an order may be served without initial notice of violation.

6.2 The Notice of Violation shall state:

- (a) The date and location of the violation.
- (b) The nature of the violation.
- (c) The time period for correcting the violation.
- (d) The potential fine(s) for the violation.
- (e) The procedures if the violation is not corrected in the time specified on the Notice of Violation.
- (f) That failing to comply with an Order may result in the County entering upon said real estate for the purpose of correcting the violation, and the costs thereof, together with administrative expenses, shall be billed to the owner, and if not paid within thirty (30) calendar days, certified to the County Auditor for collection as delinquent property taxes are collected.
- (g) The name, address and telephone number of the person to contact regarding the correction of the violation.

6.3 The Notice of Violation shall be delivered upon an individual or entity alleged to have violated this Ordinance by:

- (a) Said Notice of Violation shall be mailed by registered or certified mail or served by an equivalent means as permitted under I.C. 1-1-7-1, to his or her address as shown on the most recent records of the Auditor of Dubois County, Indiana, with return receipt requested and returned showing receipt of the Notice of Violation; or

(b) Delivering a copy of the Notice of Violation personally or by Law Enforcement Officials serving in Dubois County; or

(c) Leaving a copy of the Notice of Violation at his or her dwelling house or usual place of abode. Whenever delivery is made in this manner, the person making the delivery also shall send by first class mail, a copy of the Notice of Violation to the last known address of the person being served, and this fact shall be shown upon the return.

(d) For the purposes of this Ordinance, the date of delivery will be the date the Notice of Violation was sent by registered or certified mail, or the date delivered personally or by local law enforcement or the date the Notice of Violation was left at the residence.

6.4 The authorized enforcement agent shall be responsible for issuing the Notice of Violation.

6.5 Trash and Junk: In cases of actions violating Section 2.00 of this Ordinance a “Notice of Violation” shall be issued by the authorized enforcement agent requiring the violator to remove and properly dispose of the trash and/or junk from the premises within thirty (30) calendar days from the date of delivering the Notice of Violation, or within such extended period as may be determined by the authorized enforcement agent.

6.6 Weeds: In cases of actions violating Section 3.00 of this Ordinance a “Notice of Violation” shall be issued by the authorized enforcement agent requiring the violator to cut and/or remove the accumulation of weeds from the premises within fourteen (14) calendar days from the date of delivering the Notice of Violation, or within such extended period as may be determined by the authorized enforcement agent.

6.7 Abandoned and Junk Vehicles: In cases of actions violating Section 4.00 of this Ordinance a “Notice of Violation” shall be issued by the authorized

enforcement agent requiring the violator to comply with said section within thirty (30) calendar days from the date of delivering the Notice of Violation, or within such extended period as may be determined by the authorized enforcement agent.

6.8 If the recipient of the Notice of Violation does not correct the violation, an order will be issued by either the Hearing Authority or the authorized enforcement agent and shall be served upon the violator either in person or by registered or certified mail at his or her address as shown in the records of the Auditor of Dubois County, Indiana. The order will state the date, time and location for a hearing before the Hearing Authority to present evidence and arguments as to why an order for removal of violations and/or a penalty should not be issued for the described violation.

Section 7 HEARING

7.00 Hearing Authority

7.1 If the recipient of the Notice of Violation believes he or she has received the notice in error or believed he or she is not in violation of this ordinance, the recipient is entitled to appear at the Hearing before the Property Maintenance Hearing Authority to present evidence and arguments as to why the Notice of Violation was issued in error or a penalty should not be assessed.

7.2 The Hearing Authority may affirm, modify or rescind the Notice of Violation.

7.3 If the Notice of Violation is affirmed or modified by the Hearing Authority, the recipient has the right, pursuant to I.C. 36-7-9-8, to appeal the Hearing Authority's decision by filing a verified complaint, including the findings of fact and the action taken by the Hearing Authority, with the Dubois County

Circuit Court within fourteen (14) calendar days after the date when the action was taken.

7.4 If the Dubois County Commissioners designate a third party as the Hearing Authority, said Hearing Authority will issue a report, with all supporting evidence, to the Dubois County Commissioners within fourteen (14) calendar days.

Section 8 PENALTIES, FINES AND REMEDIES

8.00 Penalties, Fines and Remedies

8.1 Penalties and fines.

8.1.1 Upon the failure or refusal of an owner, occupant, agent or person in possession of the premises (who was the recipient(s) of the "Notice of Violation") to correct the violation as stated in the "Notice of Violation", he and/or she shall be subject up to a One Thousand Dollars (\$1,000.00) fine for any violation.

8.1.2 The Dubois County Commissioners may authorize the removal of the trash, junk or weeds as listed in the order. The removal of trash, junk, or weeds can be performed either by the County's own workers and equipment or by a contractor hired at the direction of the Commissioners for this purpose. Compliance with abandoned and/or junk vehicle violations on public right of way or property will be handled by the Dubois County Sheriff's Department.

8.1.3 The Dubois County Auditor's Office shall issue an invoice to the owner(s) of the property for the total costs incurred by the County to bring the property into compliance with this ordinance plus any fines that have

not been paid. Payment is due no later than 30 days following the date of the invoice.

8.1.4 If the fine and the costs incurred by the County are not paid when due, they may be added to the property taxes and/or be a lien against the property. Further action, including but not limited to wage garnishment and the attachment of judgements, may be pursued through court action.

8.2 Remedies

8.2.1 The Dubois County Commissioners may bring actions in the Circuit Court of Dubois County for mandatory or injunctive relief for the enforcement of, and to secure compliance with, any order or orders to otherwise provide for the enforcement of this Ordinance.

8.2.2 Any such action for mandatory or injunctive relief may be joined with an action to recover the penalties, costs and expenses provided in this Ordinance. In the event any legal action is necessary to enforce this Ordinance, the County may seek recovery of costs and expenses reasonably incurred to enforce the provisions of this Ordinance including, but not limited to, reasonable attorney's fees.

Section 9 ENFORCEMENT BY OTHER MEANS.

9.00 Enforcement by Other Means.

9.1 The County may enforce this Ordinance through any other means provided by law, including but not limited to IC 36-1-6, the Enforcement of Ordinances.

Section 10 DUBOIS COUNTY ORDINANCE VIOLATION ENFORCEMENT

10.00 Dubois County Ordinance Violation Enforcement.

10.1 The Dubois County Commissioners shall utilize an existing line item in the Commissioners' budget entitled "Ordinance Violation Enforcement" for the enforcement of this Ordinance. The Dubois County Council shall appropriate funds for the administration and enforcement of this ordinance.

10.2 All fines, penalties, and clean-up costs paid, or revenue received, if any, pursuant to this Ordinance shall be deposited into the Dubois County "General Fund", which shall be administered under the direction of the Dubois County Commissioners.

10.3 The funds appropriated into the Dubois County "Ordinance Violation Enforcement" shall be used for the following purposes:

- (a) The removal and clean up of trash, junk, weeds, abandoned and/or junk vehicles.
- (b) Court fees, costs and expenses reasonably incurred to enforce this Ordinance.
- (c) Educational materials to inform residents of, and the publicizing of, the Property Maintenance Ordinance.
- (d) Other expenditures as deemed appropriate by the Dubois County Commissioners.

Section 11 SEVERABILITY

11.00 Severability

11.1 Should any section, paragraph, sentence, clause, or phrase of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of


said Ordinance shall not be affected thereby and shall remain in full force and effect.

Section 12 DATE OF EFFECT


12.00 Date of Effect

12.1 This Ordinance shall be in full force and effect immediately upon this adoption and its publication as provided by law.

UNANIMOUSLY ADOPTED, this 18th day of March, 2019
by the Board of Commissioners of Dubois County, Indiana.


CHAD BLESSINGER


ELMER BRAMES


NICK HOSTETTER

ATTEST:


SANDY L. MORTON, AUDITOR OF
DUBOIS COUNTY, INDIANA