

TOWN OF LYNN ORDINANCE NO. 2017- 4

AN ORDINANCE OF THE TOWN COUNCIL OF LYNN, INDIANA CONCERNING AND REGULATING NUISANCES

WHEREAS, it is the responsibility of the Town Council of Lynn, Indiana, to preserve the health and welfare of the citizens of Lynn, Indiana, and

THEREFORE, be it ordained by the Town Counsel of Lynn, Randolph County, Indiana, that the following Ordinance regulating nuisances in the Town of Lynn is hereby adopted as follows:

SECTION 1. DEFINITIONS.

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

DWELLING. Any part of any building or its premises used as a place of residence or habitation or for sleeping by any person.

NUISANCE. Public nuisance.

SCRAP METAL. Pieces or parts of steel, iron, tin, zinc, copper, aluminum, or any alloy thereof, whether covered with porcelain or any other material, whether intact or in parts, which has served its usefulness in its original form and can no longer be used for its originally intended purpose.

UNFIT FOR HUMAN HABITATION. Dangerous or detrimental to life or health because of: want of repair; defects in the drainage, plumbing, lighting, ventilation, or construction; infection with contagious disease; or the existence on the premises of an unsanitary condition likely to cause sickness among occupants of the dwelling.

SECTION 2. COMMON LAW AND STATUTORY NUISANCES.

In addition to what is declared in this Ordinance to be a public nuisance, those offenses which are known to the common law and statutes of Indiana as public nuisances may be treated as such and be proceeded against as is provided in this ordinance or in accordance with any other provision of law.

SECTION 3. CERTAIN NUISANCES DESIGNATED.

The following are declared to be nuisances, but shall not be construed to prevent any other thing from being declared a nuisance under Indiana Law:

(A) The erecting or using of any building or other place for the exercise of any trade, employment or manufacture, which, by occasioning noxious exhalations, fumes, dense smoke or ash,

or other annoyances, becomes harmful to the health, safety or property of individuals or the public;

(B) Causing or suffering any offal, filth or waste to be collected or to remain in any place to the prejudice of others;

(C) The obstructing or encumbering by any means whatsoever the private ways and the public streets, alleys and places so as to create a physical threat to the public;

(D) Billboards, signboards and advertising signs whether erected and constructed on public or private property, or overhanging branches or vegetation, which so obstruct and impair the view of any portion of a public street or alley of the town as to render dangerous the use thereof;

(E) The dumping and/or accumulation upon public or private property of trash, junk, debris, litter, rubbish, garbage, rags, paper, boxes, empty barrels, crates, packing cases, tin cans, lumber not neatly piled, metal of all kinds and in all forms and all other types of material, substances and/or personalty of all kinds which is not securely protected and which is not stored in an enclosed structure or area to prevent it being seen from public and/or private property. Also, any substance or material that may lead to the attraction, breeding or multiplying of insects, vermin or rodents;

(F) Any condition existing on public or private property which is unsecured and which poses an attraction to young children who are unable to comprehend the dangers of the same;

(G) Any condition which has the effect or causes the real estate of abutting and/or adjoining owners to depreciate in value or which endangers or poses a threat to the occupants and/or owners of real estate in the area;

(H) The pollution of any public well or cistern, stream, river, lake, canal or body of water by sewage, creamery or industrial wastes or other substances;

(I) All buildings erected, repaired or altered within the town in violation of the provisions of the ordinances of the town relating to materials and manner of construction of buildings and structures;

(J) All buildings or structures of any kind which are out of repair, or dilapidated, or are so old as to be dangerous, unsafe, unsanitary or otherwise unfit or unsafe for human use; or shall be an invitation to children and endanger the lives of such children, or which, because of its condition has become a fire hazard;

(K) All loud and discordant noises or vibrations of any kind, except as may be permitted under a zoning ordinance; and,

(L) All public and/or private activities, endeavors, enterprises and/or conduct undertaken or persisting in violation of any ordinance of the town, or in violation of any statute of the state.

SECTION 4. ABATEMENT PROCEDURE.

(A) It shall be the duty of the Lynn Town Marshal or his designee to serve or cause to be served a notice upon all persons holding a substantial interest in any premises on which there is kept or maintained any nuisance in violation of the provisions of this chapter and to demand the abatement of the nuisance within (7) seven days after receipt of the notice. Notice shall be served upon persons by any means acceptable under the Indiana Trial Rules of Procedure.

(B) If the person so served does not abate the nuisance within the (7) seven day period stated in the notice, the town may proceed to abate the nuisance, keeping an account of the expense of the abatement, and the expense shall be charged and paid by the owner or occupant.

(C) The property owner is liable for all costs incurred by the Town of Lynn to abate the nuisance.

(D) The property owner is responsible for all collection costs associated abating the nuisance including, but not limited to, court costs, attorney's fees and interest on any unpaid amount incurred by the city. If the town uses town employees, the town shall set and assign an appropriate per hour rate for employees, equipment, supplies and chemicals that may be used, which for the first hour of clean up and removal shall be at a cost of \$150.00, with a one-hour minimum. Thereafter, the property owner shall be charged \$50.00 per hour per person for each hour, or portion of an hour, beyond the first hour. If the town employs the services of outside contractors to perform the abatement, any reasonable amount billed by the outside contractor shall be passed directly to the property owner. The property owner shall also be responsible for an administrative fee of \$100.00 for the costs of preparing and mailing enforcement notices. The Clerk-Treasurer shall issue a bill for services to the property owner.

(E) All sums payable by the property owner are to be paid to the Clerk-Treasurer and to be deposited in a general fund, as compensation for expenses and costs incurred by the town. The sums payable by the property owner shall be paid within 30 days of receipt of the bill for services. Pre-judgment interest for unpaid balances shall accrue interest at the rate of 8% per annum. Post-judgment interest shall be at the rate of 8% per annum.

(F) If the property owner fails to pay a bill issued under this subchapter within the time specified in this subchapter, the Clerk-Treasurer shall certify to the County Auditor the amount specified in the bill, plus any administrative costs, attorney's fees and court costs, incurred in the certification. The Auditor shall place the total amount certified on the tax duplicate for the property affected, and the total amount, including any accrued interest, shall be collected as delinquent taxes are collected and shall be disbursed to the general fund of the town.

SECTION 5. NUISANCE CREATED BY OTHERS.

For the purposes of this Ordinance, it shall not be essential that the nuisance be created or contributed to by the owner, occupant, or person having control or management of the premises, but merely that the nuisance be created or contributed to by licensees, invitees, guests, or other persons

for whose conduct the owner or operator is responsible, or by persons for whose conduct the owner or operator is not responsible, but by the exercise of reasonable care ought to have become aware of.

SECTION 6. REMOVAL OF RANK VEGETATION, WEEDS AND DEBRIS.

(A) *Definitions.* For the purpose of this section the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DEBRIS. Shall include the remains of something broken-down or destroyed.

GRASSES. Shall include blue grass, rye grass, fescue and all other grasses except those cultivated as plants or crops.

RANK VEGETATION. Shall include those weeds and growing vegetation which is excessively vigorous in growth, shockingly inconspicuous, malodorous and/or flagrant.

WEEDS. Shall include any plant that is not valued where it is growing, and is of rank growth, tends to overgrow or choke out more desirable plants and/or is listed as a weed in the U.S. Department of Agriculture publication entitled Common Weeds of the United States, or in any similar government publication.

(B) *Violation.* It is a violation of this section to have weeds, rank vegetation and/or debris on any real property located within the town's corporate limits.

(C) *Requirement to cut.* All owners of real property located within the town shall cut and remove weeds, grass and other rank vegetation growing thereon that exceeds an average height of eight inches and shall keep their property clear of debris.

(D) *Violation notice.*

(1) In the event of a violation of this section, an officer of the Police Department shall issue a written notice (violation notice) to the violating landowner. The violation notice shall identify the violation and order the landowner to correct the same within seven calendar days from the date on which the violation notice is served on the landowner (abatement period). Personal service, service by U.S. certified mail or any other manner recognized in the Indiana Rules of Trial Procedure shall constitute proper service upon the landowner for the purposes of this section. Upon service of notice under this section, said notice shall be effective for a period of twelve months from the date of the first service of notice and no additional violation notice is required for subsequent violations occurring within the twelve month period.

(2) If the initial notice of violation of this section was provided by certified mail or any other manner recognized in the Indiana Rules of Trial Procedure, a continuous abatement notice may be posted at the property by the Police Department at the time of abatement, instead of by certified mail or equivalent service as required under this section. A continuous abatement notice serves as notice to the land owner that each subsequent violation during the same year for which the

initial notice of the violation was provided may be abated by the town or its contractors.

(E) *Appeal.* Any violation notice issued pursuant to this section may be appealed to the Town Council if written notice of appeal is served by the landowner. The timely appeal of a violation notice shall toll the abatement period pending the issuance of a decision thereon by the Town Council.

(F) *Town to abate.* If the landowner fails to timely abate each violation set forth in a violation notice, the landowner shall be deemed to have granted permission to the town to enter the landowner's property for the limited purpose of cutting and/or removing such debris, weeds or rank vegetation located thereon and identified in the violation notice. In such case, the Clerk-Treasurer or his or her designee shall prepare a certified statement as to the actual administrative and other costs incurred by the town in taking such action, and serve a copy of the invoice on the landowner. The landowner shall, within seven calendar days from the date on which the landowner is served with such invoice (payment period), pay in full the amount stated thereon to the town.

(G) *Appeal of costs.* Any invoice issued pursuant to this section may be appealed to the Town Council if written notice of the appeal is served on the Clerk-Treasurer within seven calendar days from the date which the invoice is served on the landowner. The timely appeal of the invoice shall toll the payment period pending the issuance of a decision thereon by the Town Council.

(H) *Failure to pay.* If the landowner fails to timely pay an invoice issued pursuant to this section, the Clerk-Treasurer or his or her designee shall certify to the County Auditor the amount of the invoice, plus any additional administrative costs incurred in the certificate of the same. The County Auditor shall place the total amount so certified on the tax duplicate for the property at issue, and the total amount, including any accrued interest, shall be collected as delinquent taxes are collected and shall be disbursed to the general fund of the town.

(I) *Time of appeals.* The Town Council shall hear any timely requested appeal of a notice of violation or invoice within 30 calendar days following receipt of the same, and shall thereafter promptly issue a written decision granting or denying, in whole or in part, the appeal. The date on which the Town Council's decision is served on the landowner shall thereafter become the first calendar day of the abatement period or payment period, as applicable.

(J) *Penalty.* Whoever shall be found in violation of the terms, conditions and provisions of this section shall be fined not less than \$25 and not more than \$500, plus costs. A separate offense shall be deemed committed upon each day during or on which such violation occurs or continues. In addition, the town may seek injunctive relief in a court of law and/or equity to enforce the terms and provisions of this section. This section supplements and does not limit any other remedy or action available in law or in equity regarding the subject matter hereof.

(K) *Nuisance.* In addition to the requirements, provisions and penalty set out in this section, any person, including the owner or occupant of real estate, who fails and/or refuses to keep weeds, rank vegetation, debris and grasses on real estate under his or her possession mowed and cut as provided in this section, shall be guilty of keeping and maintaining a nuisance and shall also be

subject to the provisions, conditions, fines and penalties set out elsewhere in this Ordinance which deal with maintaining a nuisance.

SECTION 7. ACCUMULATION OF LITTER AND TRASH.

(A) *Littering prohibited.* No person shall throw, discard, deposit, place or leave or cause to be thrown, discharged, dumped, deposited, placed or left on any streets, parkways, roadways, thoroughfares, alleys, sidewalks, vacant lots, front yards or porches, in or on the grounds of the public parks, swimming pools, playgrounds, recreation areas, public buildings, streams, water or banks of such streams or rivers, any waste paper, ashes, glass, cans, dirt, rubbish, waste, garbage, refuse or any other trash. For any person violating the provisions of this section, the penalty for the first three offenses in any 12-month period shall be \$25.00 for the first offense, \$50.00 for the second offense, and \$100.00 for the third offense. All subsequent offenses in any 12-month period are subject to enforcement through the judicial system as provided by state statute and/or local ordinance.

(B) *Causing litter on property.* It shall be a violation of this section for any person to place on, throw onto, cast onto, or permit any litter, debris, junk, refuse, or thing causing litter, junk or debris onto property of any person, firm, association, corporation, the State of Indiana, and it shall further be a violation of this ordinance for any parent, guardian or person charged with, or having custody of, any minor child under the age of 18 years to place on, throw onto, cast onto or permit any litter, debris, junk, refuse, or thing causing litter, junk or debris onto property of any person, firm, association, corporation, the State of Indiana and its political subdivisions, including but without being limited to the Town of Lynn, Indiana. For any person violating the provisions of this section, the penalty for the first three offenses in any 12-month period shall be \$25.00 for the first offense, \$50.00 for the second offense, and \$100.00 for the third offense. All subsequent offenses in any 12-month period are subject to enforcement through the judicial system as provided by state statute and/or local ordinance.

(C) *Littering prohibited in public parks.*

(1) No person shall throw, place or allow to remain in a public park public parkway or public boulevard of the town any box, paper, stale or broken food, food remains, melon rinds, or other waste or rubbish of any kind, or display for sale or for advertising purposes in any public park, public parkway or public boulevard of the town any good, article, thing, placard, sign or circular, except upon written permission from the Town Council. For any person violating the provisions of this section, the penalty for the first three offenses in any 12-month period shall be \$25.00 for the first offense, \$50.00 for the second offense, and \$100.00 for the third offense. All subsequent offenses in any 12-month period are subject to enforcement through the judicial system as provided by state statute.

(D) *Definitions.*

GARBAGE. All organic household waste, offal, animal and vegetable matter prepared or intended for use as food, condemned foodstuffs, materials and substance materials and things

ordinarily disposed of in containers and incinerators by hotels, restaurants, stores, apartment houses, and private dwellings.

LOT OR PARCEL OF REAL ESTATE. Shall include, in addition to those grounds within their respective boundaries, all of the grounds lying to the center of the street or alley or alleys where the street or alley is not improved.

OTHER WASTE SUBSTANCES. Any and all junk, tires, rubbish or debris which is harmful to the general public health and welfare or may detract from the appearance of the neighborhood.

RANK VEGETATION. Any and all junk, rubbish or debris which is harmful to the general public health and welfare or may detract from the appearance of the neighborhood.

TRASH. Rubbish and refuse including, but not limited to, lumber, concrete, glass bottles and containers, broken glass, rubber products, metals, rags, weeds, tree toppings, grass, leaves, discarded furniture, tin cans, and appliances.

(E) *Garbage and trash regulations.*

(1) It shall be unlawful for the owner, occupant, or lessee of any lot or parcel lot or parcel for real estate within the corporate limits of the town to allow, suffer, or permit any garbage, trash, rank vegetation, or other waste substance to be deposited on, grown on, or remain on any said lot, parcel of lot or parcel of real estate.

(2) (a) It shall be the responsibility of the owner, occupant, or lessee of any building, structure or property in the town, where garbage or trash is generated or exists to provide or cause to be provided and at all times to keep or cause to be kept portable containers, receptacles or dumpsters for holding garbage and trash.

(3) The provisions of this division shall apply to all single, multiple residential units, and commercial and industrial properties.

(F) *Nuisances.*

(1) Whenever and wherever garbage, trash, rank vegetation, or other waste substances shall exist, covering or partly covering the surface of any lot or parcel of real estate within the corporate city, the same shall be deemed a nuisance and a violation.

(2) Any person, including the owner or occupant of real estate, who fails and/or refuses to comply with the terms and provisions of this section shall be guilty of keeping and maintaining a nuisance and will be subject to other sanctions and penalty sections contained in section (11) which regulate common nuisances. In addition to the imposition of monetary fines and penalties by the town, the town may seek injunctive relief in a court of law and/or equity to enforce the terms and provisions of this section.

(G) *Enforcement.* It shall be the duty of the Lynn Police Department to enforce this section.

(H) *Penalties.* Any person violating any provision of this section shall upon conviction thereof be fined in an amount not to exceed \$500.00. Each day such violation is committed or is permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

(I) *Notice to abate; warning citations.* It shall be the duty of the Lynn Police Department to inspect from time to time the various lots or parcels of real estate lying within corporate limits of the town, and if it is found that garbage, trash, rank vegetation or other waste substances are permitted to be deposited on, grown on, or remain in such lots or parcels of real estate it shall be its duty to ascertain the names of owners, occupants, or lessee of the property. Upon investigation and evaluation of the severity of the violation by the Lynn Police Department, the Lynn Police Department may do one of the following:

(1) Issue a warning citation to the owner, occupant, or lessee of the property that is in violation of local ordinance provisions. The warning will allow the owner, occupant, or lessee of the property in violation seven days to bring the property into compliance with local ordinance provisions. If after the seven-day period the property is still not in compliance with local provisions, the Lynn Police Department may then issue a citation to the owner, occupant, or lessee of the property in violation.

(2) Immediately issue a citation to the owner, occupant, or lessee of the property that is in violation of local ordinance provisions.

(J) *Burning garbage and trash prohibited.*

(1) The burning of trash, garbage, refuse or waste materials or waste substances within the Town of Lynn, Indiana is declared to be a nuisance and is prohibited.

(2) The burning of clean wood products for the use of recreation and cooking is permissible in a metal or masonry type pit or device as long as the smoke does not create a nuisance to the neighborhood and the fire is attended at all times. Any complaint of smoke from said fires that is causing an odor or inhalation hazard may cause said fire to be extinguished or cause said fire to be extinguished by proper firefighting authorities.

(3) It shall be the duty of the Lynn Police Department to enforce this division.

(4) For any person violating the provisions of this division, the penalty for the first offense in any 12-month period shall be \$25.00 for the first offense, \$50.00 for the second offense, and \$100.00 for the third offense. All subsequent offenses in any 12-month period are subject to enforcement through the judicial system as provided by state statute and local ordinance.

(K) *Prohibited acts regarding garbage.*

(1) No person shall throw, cast or deposit any garbage in or about any building structure or premises or upon any public street, alley or public place within the town. No person shall deposit any substance or thing other than garbage into any garbage receptacle.

(2) Violation of this division shall be an infraction. For any person violating the provisions of this division, the penalty for the first offense in any 12-month period is subject to enforcement through the judicial system as provided by state statute and local ordinance.

(L) *Illegal dumping.*

(1) It shall be a violation of this division for any person to throw, cast, discharge, dump, place, leave, cause to be thrown, discharged, dumped, deposited, placed or left on any property owned or maintained by the town any waste, paper, ashes, glass, cans, dirt, tree toppings, leaves, weeds, grass, discarded furniture, appliances, organic household waste, animal remains, rubbish, waste, garbage, refuse, and trash.

(2) Anyone found to be in violation of this provision shall be subject to the penalties contained in Section (H) above and be responsible for any charges associated with the clean-up of the illegally dumped items.

SECTION 8. SOUNDING OF VEHICLE HORNS.

(A) It shall be unlawful to sound any horn, signal device, or other attachment on a vehicle except as a necessary warning of danger to person or property.

(B) It shall be unlawful to create any grating, screeching, grinding, or squealing noise, or any loud reports, shots, or other loud and unusual noises in the use or operation of motor vehicles or appurtenances attached thereto.

SECTION 9. NOISE REGULATIONS.

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ANIMALS. Any living creature domestic or wild

DEVICE. Any radio, tape recorder/player, compact disc player, stereo system, record player, television or other electronic device capable of producing, reproducing, or amplifying any sound, noise, musical rhythm or vocal sound.

MOTOR VEHICLE. Any vehicle, such as, but not limited to automobiles, trucks, motorcycles or any other vehicles propelled or operated by means of power.

PLAINLY AUDIBLE. Any noise, musical sound, musical rhythm or any other sound that is electronically amplified or broadcast in any manner that can be heard by the human ear.

PUBLIC RIGHT-OF-WAY or PUBLIC PLACE. Includes, but is not limited to, any avenue, street, road, alley, easement, parkway, highway, sidewalk, park or other public place that is owned or controlled by any governmental entity.

(B) *Loud noises prohibited.* It shall be unlawful for any person, corporation, or entity to generate or produce noise or play, use, or operate any device that disturbs a neighbor's peace and quiet during the hours of 10:00 p.m. to 7:00 a.m.

(C) *Loud motor vehicle device noises prohibited.* It shall be unlawful within the municipal limits of the town, for any device within or attached to any motor vehicle to be utilized in or at such a level so as to be plainly audible at a distance greater than 30 feet from said device.

(D) *Loud noises within buildings.* It shall be unlawful for any person to generate or produce any sound or noise if it emanates from inside a building or structure utilized as multiple residences, and can be clearly heard by a person, using his or her normal hearing, through the partitions separating the dwelling units.

(E) *Animals creating nuisances.* No persons shall fail to exercise proper care and control of his/her animals to prevent them from becoming a nuisance. No persons shall own, keep, or harbor any animal which by frequent or habitual howling, yelping, barking, or otherwise causing serious annoyance or disturbing of peace to persons upon a public street, highway, right of way or to the neighborhood where the person resides.

(F) *Exemptions.* The following are exempted from the provisions of this section:

- (1) Sounds emitted from authorized emergency vehicles;
- (2) Lawn mowers, garden tractors, construction equipment, snow equipment, and power tools, when properly muffled, between the hours of 7:00 a.m. and 10:00 p.m. only;
- (3) burglar alarms and other warning devices when properly installed, provided the cause for such alarm or warning device sound is investigated and turned off within a reasonable period of time;
- (4) Parades, festivals, carnivals, fairs, celebrations, concerts, artistic performances or other events authorized by permit by the Town Council or another appropriate governmental entity;
- (5) Attendant noise connected with the actual performance of athletic or sporting events and practices related thereto;
- (6) The emission of sound for the purpose of alerting persons to the existence of an

emergency, or for the performance of emergency work;

(7) Sounds associated with the use of fireworks per state law;

(8) Sounds associated with the use of an approved public safety training facility between the hours of 7:00 a.m. and 10:00 p.m.; and/or

(9) Sounds associated with the normal conduct of legally established non-transient businesses, when such sounds are customary, incidental and within the normal range appropriate for such use.

(F) *Violations and penalties.* Any person who violates the provisions of this section shall be guilty of an infraction, punishable by a fine of not more than:

(1) First offense: up to \$250;

(2) Second offense within two years: up to \$500;

(3) Third offense within two years: up to \$1,000; and

(4) Fourth and subsequent offenses within 2 years: up to \$2,500.

(G) *Enforcement by Town Police Department.* Citations for violations of this section may be issued by any member of the Town Police Department. Fines are payable to the Lynn Town Clerk for deposit into the general fund.

It is hereby certified that this Ordinance Number 2017- 4 was passed by the Town Council of the Town of Lynn, Indiana, at its legally convened meeting on the 1st day of ~~February~~ June, 2017.

Judy Mullin

Barbara Hines
Barbara Hines

Kevin Slick
Kevin Slick

ATTEST: Kaylene Straley
Kaylene Straley, Clerk Treasurer

Date: 6-7-2017

