

**TOWN OF NEW WHITELAND, INDIANA**

**ORDINANCE NO. 2020-01**

**AN ORDINANCE AMENDING ORDINANCE 2017-13,  
THE NEW WHITELAND NUISANCE ORDINANCE**

**WHEREAS**, pursuant to Indiana Code Chapter 36-8-2, the Town of New Whiteland (the “Town”), by action by its Town Council (“Council”) may, among other things, regulate conduct, or use, or possession of property, that might endanger the public health, safety, or welfare;

**WHEREAS**, pursuant to Indiana Code Sections 36-9-2-5 and 36-9-2-7, the Town, may, among other things establish, vacate, maintain, operate, and regulate the use of public ways;  
32-30-6-7

**WHEREAS**, pursuant to Indiana Code Section 36-1-6-2, if a condition violating an ordinance of the Town exists on real property, employees or contractors of the Town may enter onto that property and take appropriate action to bring the property into compliance with the ordinance and collect from the property owner the costs it incurs, including, without limitation, administrative costs and removal costs;

**WHEREAS**, on December 5, 2017 the Council adopted Ordinance 2017-13 to impose on property owners and occupants of property in New Whiteland rules, procedures, and penalties related to conditions deemed to be public nuisances;

**WHEREAS**, since adopting Ordinance 2017-13 the Council has concluded that revisions and additions are needed.

**ACCORDINGLY, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF NEW WHITELAND, INDIANA, AS FOLLOWS:**

Section 1. The New Whiteland Town Marshal and deputy marshals, shall be authorized and responsible for the enforcement and administration of this Ordinance. The Council, also, may appoint a code enforcement officer to enforce and administer this Ordinance along with the Town Marshal and deputy marshals.

Section 2. Public Nuisance Prohibition: A public nuisance, for purpose of this ordinance, shall be defined as

1. An unreasonable interference with a right common to the general public.
2. Circumstances that may sustain a holding that an interference with a public right is unreasonable include the following:
  1. Whether the conduct involves a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience, or

2. whether the conduct is proscribed by a statute, ordinance or administrative regulation, or
3. whether the conduct is of a continuing nature or has produced a permanent or long-lasting effect, and, as the actor knows or has reason to know, has a significant effect upon the public right.

Any person who:

- (a) Maintains or permits a condition that unreasonably annoys, injures, or endangers the safety, health, or comfort of the public;
- (b) Interferes with, obstructs, or renders dangerous for passage or use, any public right-of-way or easement, sidewalk, ditch, or other public facility or publicly regulated resource<sup>03</sup>; or
- (c) Commits any other act or permits conditions declared by law, other applicable Town Ordinances, or this ordinance to be a Public Nuisance,

will be in violation of this Ordinance and subject to the enforcement and abatement actions and penalties as set forth herein and as provided for in Indiana Code 36-1-6-2, incorporated herein by reference.

Section 3. Public Nuisances Enumerated: The following conditions and activities, except as may be expressly permitted by other applicable Town Ordinances, are declared to be Public Nuisances:

- (a) Water, snow or ice, rain, wastewater, or other liquids, or any other substance or material, cast upon, discharged, or permitted to flow on to public property including, without limitation, a public right of way, street or sidewalk;
- (b) Trees, shrubs, hedges, weeds, grass and other vegetation, signs, fences, and all other impediments or obstructions that block or interfere the view or “line of sight” related to public roads;
- (c) Trees (and limbs or roots thereof), shrubs, hedges, weeds, grass and other vegetation that cause damage to public roads or sidewalks (e.g. damage caused by roots) or interfere with the safe and convenient use, by pedestrians and vehicles, as the case may be, of public passage ways, streets, sidewalks, or trails;
- (d) Except for the period that begins at 7:00 a.m. the day before the scheduled day for trash or recyclables collection by the Town’s trash collection contractor and ends on noon the day after the scheduled day for trash or recyclables collection by the Town’s trash collection contractor, all trash and/or recyclable containers kept on private property, in:
  - i. a location which is more than five (5) feet in front of a Front Building Line; or
  - ii. a location, which is not more than five (5) feet in front of a Front Building Line, but which is within five (5) feet of any other boundary line of a residential property.
- (e) Obstructions and excavations causing damage to or otherwise interfering with the ordinary and intended public use of streets, alleys, sidewalks, public grounds, natural waterways, ditches, gutters, drains, and curbs, or wells, holes, or similar excavations, either on public or private property, left uncovered or in such other condition, as to constitute a hazard to any person, except as may be expressly permitted by other applicable Town ordinances;

(f) A party or other gathering that unreasonably disturbs the peace, quiet, or repose of the public or of another person's use and enjoyment of their property;

(g) Barbed wire, razor wire, or any sharp iron points used in any manner or application anywhere in Town;

(h) Machinery, equipment, or tools, not being used as part of an ongoing and active building or repair project permitted under other applicable Town ordinances, household appliances, furniture, recreational apparatuses (e.g. swing sets, trampolines, basketball goals, exercise equipment, bicycles, tricycles, and other similar devices), toys, or other materials or similar items placed or left on a public right-of-way, including, without limitation, sidewalks, trails, streets, and curbs;

(i) Machinery, equipment, or tools, not being used as part of an ongoing and active building or repair project permitted under other applicable Town ordinances, household appliances, discarded or broken recreational apparatuses (e.g. swing sets, trampolines, basketball goals, exercise equipment, bicycles, tricycles, and other similar devices), discarded and unused toys, automobile bodies and/ or parts, or other materials or similar items kept in open view on private property;

(j) Litter garbage, trash, debris, leaves, grass clippings, compost or limbs, or other items placed or left on a public right-of-way, including, without limitation, sidewalks, trails, streets, and curbs, or on adjacent private property, except as expressly permitted by other applicable ordinances of the Town, for example, to allow for planned and scheduled collection by the Town or its agents and contractors;

(k) Litter, garbage, trash, debris, leaves, grass clippings, compost or limbs, or other discarded items placed or left anywhere on private property, except as expressly permitted by other applicable ordinances of the Town, for example, in approved containers for trash and recyclables to allow for planned and scheduled collection ("approved containers", for purposes of this section, shall mean and be limited to containers provided by the contractor with whom the Town has a trash and recyclables collection and disposal contract);

(l) The discharging of the exhaust or permitting the discharge of the exhaust of any internal combustion engine, motor vehicle, motorcycle, or all-terrain vehicle (ATV), except through a muffler or other device that effectively prevents loud or explosive noises therefrom and complies with all applicable state laws and regulations;

(m) The use or operation, or permitting the use or operation, of any musical instrument, musical device, sound producing or amplifying device, paging system, machine, or other device that produces noises or sound in a distinct and loud manner that disturbs the peace, quiet, or comfort of any other person or the general public;

(n) The presence of one or more Abandoned Vehicle(s). "Abandoned Vehicle," for purposes of this Ordinance shall be defined as

(1) A vehicle located on public property illegally.

(2) A vehicle left on public property without being moved for twenty-four (24) hours.

(3) A vehicle located on public property in such a manner as to constitute a hazard or obstruction to the movement of pedestrian or vehicular traffic on a public right-of-way.

(4) A 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.

- (5) A vehicle from which the engine, transmission, or differential has been removed or that is otherwise partially dismantled or inoperable and left on public property.
- (6) A vehicle which is mechanically inoperable, and remains on private property, in open view, continuously, for more than twenty (20) days. For purposes of this subparagraph, a vehicle covered by a tarpaulin or other plastic, vinyl, rubber, cloth, textile or other covering is considered to be in open view.

(o) More than one Unregistered Vehicle, as defined herein, kept on private property, in open view, continuously, for more than twenty (20) days. For purposes of this subparagraph, a vehicle covered by a tarpaulin or other plastic, vinyl, rubber, cloth, or textile covering is considered to be visible.

For purposes of this Ordinance, a vehicle, which is required to be registered, pursuant to Indiana Code Chapter 9-18.1-2, shall be deemed to be an Unregistered Vehicle unless a valid license plate, issued uniquely for that vehicle, is securely fastened to it in the manner prescribed by Indiana Code Section 9-18.1-4-4 which, for passenger vehicles, pick-up trucks, and motorcycles, shall be upon the rear of the vehicle, as follows:

- (a) *A license plate shall be:*
  - (1) *securely fastened, in a horizontal and upright position that displays the registration expiration year in the upper right corner, to the vehicle for which the plate is issued:*
    - (A) *to prevent the license plate from swinging;*
    - (B) *at a height of at least twelve (12) inches from the ground, measuring from the bottom of the license plate; and*
    - (C) *in a place and position that are clearly visible;*
  - (2) *maintained free from foreign materials and in a condition to be clearly legible; and*
  - (3) *not obstructed or obscured by tires, bumpers, accessories, or other opaque objects.*
- (b) *An interim license plate issued or used by a dealer licensed under IC 9-32 or used by a manufacturer must be displayed:*
  - (1) *in the manner required under subsection (a) for the type of vehicle on which the interim license plate is displayed; or*
  - (2) *in a location on the left side of a window that is:*
    - (A) *facing the rear of the motor vehicle; and*
    - (B) *clearly visible and unobstructed. A plate displayed under subdivision (2) must be affixed to the window of the motor vehicle.*
- (c) *Upon the renewal of a registration under this article, a license plate other than a temporary license plate must display a renewal sticker:*
  - (1) *that is securely affixed in the upper right corner of the license plate; and*
  - (2) *that covers the previous registration expiration year.*

(p) Any vehicle, equipment, tool, tank, can, bottle or other container, from which any liquid or other material which may be hazardous or deemed to be a pollutant has leaked or is leaking on to the ground, including any paved surface.

(q) All other uses and conditions of property that are defined as public nuisances in other Town ordinances.

**Litter**, for purposes of this Ordinance, includes, but is not limited to: garbage, trash, debris, lawn or garden waste, newspapers, magazines, glass, metal, plastic or paper containers; construction materials (except for those being used as part of an ongoing and active building or repair project permitted under other applicable Town ordinances) and

construction debris; scrap metal; discarded clothing; household appliances; furniture (except for customary outdoor patio furniture in good and usable condition); discarded or unused recreational equipment and toys; motor vehicle, trailer, and boat parts; or other nauseous or offensive matter of any kind, that is not kept in a designated container which: 1) is designed to prevent its escape and 2) picked up (emptied) on a routinely scheduled basis. Litter kept in or on a trailer or truck bed shall not be deemed to be kept in a designated container.

**Front Building Line**, for purposes of this Ordinance means a line extending the entire width of a lot across that part or face of the building nearest the front line of the lot and parallel to the front lot line. Corner lots, which are bounded on 2 sides by a public street, will be deemed to have 2 front building lines oriented to both streets. Exposed steps, patios, decks, and porches shall not be considered a part of the building for purposes of defining a Front Building Line.

**Open View**, for purposes of this Ordinance means visible from private property and/or public property including, without limitation, public roads and rights of way.

**Vehicle**, for purposes of this Ordinance means, a device in, upon, or by which a person or property is, or may be, transported or drawn upon a highway.

The term includes the following:

- (1) Off-road vehicles.
- (2) Manufactured homes or mobile homes that are:
  - (A) personal property not held for resale; and
  - (B) not attached to real estate by a permanent foundation.
- (3) Watercraft.

The term does not include the following:

- (1) A device moved by human power.
- (2) A device that runs only on rails or tracks.
- (3) A wheelchair.
- (4) An electric foot scooter.

Section 4. Owners and occupants of real property within the Town shall maintain and use their property in a manner that does not constitute a Public Nuisance and, otherwise, complies with this Ordinance. All other persons shall comply with this Ordinance to the extent it may be applicable. If the condition of private property is the basis of a Violation Notice issued under this Ordinance, then all owners and occupants of that property will be deemed to be violating persons and subject to enforcement actions and remedies of the Town.

Section 5. If conditions on a property constitute a Public Nuisance, as described in this Ordinance, an officer of the New Whiteland Police Department or designated code enforcement officer will, customarily, issue a written warning to the property owner and/or occupants, either by personal delivery or by leaving the notice on an exterior door. **THE ISSUANCE OF A WRITTEN WARNING, PRIOR TO THE ISSUANCE OF A VIOLATION, IS DISCRETIONARY AND NOT A PREREQUISITE TO THE ISSUANCE OF A VIOLATION OR OF ABATEMENT ACTION BY THE TOWN; PARTICULARLY FOR SECOND AND SUBSEQUENT VIOLATIONS ON THE SAME PROPERTY.**

A warning, if issued, will:

1. describe, with reasonable particularity, the conditions that constitute a Public Nuisance;
2. direct the property owner and/or occupants to abate the violation within a prescribed time, not less than two (2) and not more than seven (7) days; and

3. advise the property owner and/or occupants that if the Public Nuisance is not abated within the prescribed time, a violation will be issued.

If a Public Nuisance is not abated, within the time prescribed in a written warning, an officer of the New Whiteland Police Department or designated code enforcement officer shall issue a violation to the property owner and/or occupants, either by personal delivery or by way of registered or certified mail or other means by which a written acknowledgment of receipt may be requested and obtained. The violation notice shall:

1. inform the property owner and/or occupants of a violation of this Ordinance and describe, with reasonable particularity, the conditions that constitute a Public Nuisance;
2. direct the property owner and/or occupants to abate the violation within a prescribed time;
3. inform the property owner and/or occupants that if the violation is not abated the Town may elect to abate the violation and bill the violating person or persons for the costs incurred by the Town, including administrative costs and attorney's fees; and
4. advise the property owner and/or occupants that the violation may be appealed by submitting, within ten (10) days from the date of receipt of the Violation Notice, a written notice of appeal.

Section 6. If a violation of this Ordinance is not abated within the time prescribed in a violation notice, the Town, as permitted by and pursuant to Indiana Code Section 36-1-6-2, may enter on to the property and abate the violation or contract with a private contractor to abate the violation. The Town may abate an ongoing violation in the same manner and as often as the conditions on the property require.

Section 7. The property owner and/or the occupants of property which is the subject of a violation of this Ordinance shall be fined Fifty and 00/100 Dollars (\$50.00) for the first violation; One Hundred Fifty and 00/100 Dollars (\$150.00) for a second violation, dated one year or less from the date of the most recent prior violation; and Three Hundred and 00/100 Dollars (\$300.00) for each subsequent violation, dated one year or less from the from the date of the most recent prior violation. For purposes of this Section, a violation will be deemed to be a subsequent violation only if it is based on the same conditions, as described in subsections (a)-(o) of Section 3, as a prior violation.

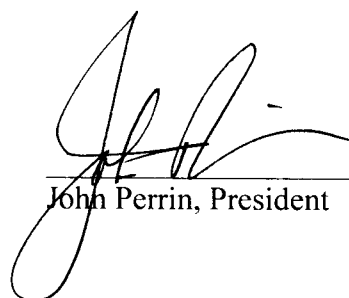
Section 8. If the Town abates a violation, it will issue a bill to the property owner for the costs it incurs in bringing the property into compliance with this Ordinance, including administrative costs, removal costs, and attorney's fees. A bill issued to the property owner, under this section, will be delinquent if not paid within thirty (30) days after the date of the issuance of the bill.

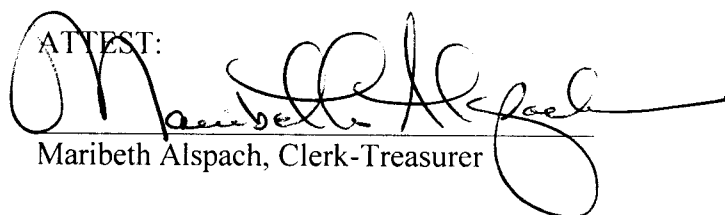
Section 9. This Ordinance repeals and replaces Ordinance 2017-13 and all other ordinances and parts thereof with which it may be in conflict.

Section 10. This Ordinance shall be effective upon its final adoption and publication as required.

Introduced and adopted on first reading by the Town Council of the Town of New Whiteland on the 21<sup>st</sup> day of January, 2020

Adopted on second and final reading by the Town Council of the Town of New Whiteland on the 4<sup>th</sup> day of February, 2020.

  
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John Perrin, President

ATTEST:  
  
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Maribeth Alspach, Clerk-Treasurer