

TOWN OF PENDLETON
MADISON COUNTY, INDIANA
ORDINANCE NO. 2016 - 13

**AN ORDINANCE CREATING AN UNSIGHTLY PREMISES ORDINANCE FOR THE
TOWN OF PENDLETON**

RECITALS

A. The Town Council of the Town of Pendleton ("Council" and "Town," respectively) is dedicated to ensuring the upkeep and maintenance of buildings and properties in the Town in the interests of the public's health, safety, and welfare. Accordingly, the Council finds it necessary to update the Town's ordinance governing such issues and unsightly premises in the Town.

NOW, THEREFORE, IT IS HEREBY ORDAINED by the Council as follows:

SECTION 1. The following shall be added as Section 08 to Title IX, Chapter 93 of the Code of Ordinances for the Town:

§ 93.08 UNSIGHTLY PREMISES AND UPKEEP OF PROPERTY

SECTION I
DEFINITIONS

A. JUNK, Junk shall mean old, unsightly, or deteriorated material of any kind, including but not limited to, metals, cloth, paper, trash, garbage, glass, plastics, rubber, tires, waste, or wrecked, dismantled, disabled, junked or abandoned motor vehicles, trailers or other vehicles or any parts thereof.

B. DANGEROUS DILAPIDATED OR UNSAFE STRUCTURES, Dangerous, dilapidated or unsafe structures shall mean and shall include any building or structure, permanent or mobile, which by reason of age or condition, or any other reason, is unsightly, unsafe, dangerous or detrimental such that it poses a substantial risk to the health, safety or welfare of the citizens of the Town.

C. DERELICT VEHICLE/VESSEL/EQUIPMENT/MACHINERY: A derelict vehicle, vessel, item of equipment or machinery refers to such items that is left on a property, with or without lawful authority, and appears to be disused or abandoned by reason of its age,

appearance, mechanical condition, or, where required by law to be licensed or registered, lacks the same.

D. GARBAGE. Garbage shall encompass all terms such as trash, litter, rubbish, refuse (organic or inorganic), debris and waste material.

E. HEAVY TRASH. Any discarded matter which cannot be adequately placed or wrapped in commercially manufactured plastic garbage or trash bags because of its size or weight, and shall include but not necessarily limited to appliances, water heaters, furniture, mattresses, box springs, tires, bricks, concrete blocks, bicycles, lumber, furnace or air conditioning units, metal duct or pipe, large tree limbs, dismantled, disabled or abandoned automobiles, trailers, other vehicles, automotive, trailers, and other vehicle parts and all other items which are either too large or too heavy to be securely wrapped in bags as described above herein.

F. NOXIOUS OR UNSIGHTLY WEEDS. Noxious or unsightly weeds shall mean any vegetation which, by reason of its nature, type, or failure to maintain, mow, trim or cultivate to unreasonable heights; or is unsightly, dangerous or detrimental such that it poses a substantial risk to the health, safety or welfare of the citizens of said Town.

G. OWNER: Owner shall refer to the person holding title to a property subject to this Ordinance as reflected on the last recorded deed maintained by the Madison County Recorder's Office, and shall include a part owner, joint owner. In the case of the absence or incapacity of the title holder, the definition includes: an executor, trustee or guardian, an agent, mortgagee having control or care of the land or building, and in the absence of proof of ownership, the person assessed for the property is considered as the owner.

H. PREMISES/PROPERTY: Premises and/or property shall include any dwelling, house, building, multi-family structure or other structure, whether inhabited or whether temporarily or continuously uninhabited or vacant, and includes but is not limited to, any yard, grounds, walk, driveway, porch, steps, vestibule or mailbox belonging or appurtenant to such dwelling, house building, or structure.

I. RESPONSIBLE PARTY. Responsible party shall include owner, landlord, lessee, renter, and/or occupant of premises.

J. UNSIGHTLY: Unsightly shall include partially demolished, decayed, deteriorated or in a state of disrepair so as to be dangerous, unhealthy or substantially detract from the appearance of the immediate neighborhood or adjoining properties. Included in the definition is a broad list of conditions that could cause a property to be determined unsightly, such as property containing:

- an excessive accumulation of ashes, junk, other rubbish or refuse;

- the storage or accumulation of a derelict vehicle, vessel, or item of equipment or machinery, or bodies or parts of such items;
- an excessive accumulation of wood shavings, paper, sawdust, dry and inflammable grass or weeds or other combustible materials.
- an excessive accumulation of building material, unless the owner or occupier of the parcel is: (1) in possession of a valid building permit in respect of the materials or it is stored in a closed building or structure such that the accumulation is not visible from another property or the road; or (2) taking part in active construction/repairs, which shall be subject to review by the Town to ensure that the owner or occupier is continuing the construction/repairs in a timely manner;
- the storage or accumulation of all or part of a vehicle which is not validly registered and licensed in accordance with law, or capable of movement under its own power, unless it is stored in a closed building or structure such that the vehicle, or any portion of the vehicle, is not visible from another property or the road;
- an excessive accumulation of filth, discarded materials or rubbish of any kind, whether or not for commercial purposes or as part of a trade, including but not limited to dead animals, paper, glass, metal, plastics, wire, ropes, machinery, tires, appliances, and any other scrap or salvage;
- an excessive accumulation or deposit of discarded or fallen building materials, including the surface, covering, or coating of a building or structure, or the building or structure itself or part of it which is missing all or a portion of its surface, covering, or coating materials;
- the use of any premises, other than a parcel properly zoned for such use, for the storage, repair, cleaning, maintenance, or servicing of mechanical equipment including bulldozers, graders, backhoes, or other similar equipment;
- the presence of graffiti, whether in the form of pictures or words, on real property or on the surface of a premises located on the real property;
- an excessive accumulation of garbage not contained in a covered receptacle;
- a property, a building or structure that is in a ruinous or dilapidated condition;
- a property, a building or structure that the condition of which seriously depreciates the value of land or buildings in the vicinity;

- property, a building or structure that is in such a state of non-repair as to be no longer suitable for human habitation or business purposes or which poses a substantial risk to the health and safety of the citizens of the Town;
- property, a building or structure that is an allurements to children who may play there to their danger;
- property, a building or structure that is unsightly in relation to neighboring properties because the exterior finish of the building or structure is not maintained – e.g., missing or severely decayed/damaged cladding and/or veneer (brick, stone, siding);
- property, a building or structure that is a fire hazard to itself or to surrounding lands or buildings; or
- property, a building or structure that has been excavated without installing a silt fence and a protective warning tape around the excavation area or had fill placed on it in a manner that results in a hazard.

SECTION TWO VIOLATION

Every responsible party, as defined herein, owning, managing, having charge, having control or having occupancy of any real property, premises, lot or building in the Town shall not allow such property, building or structure to accumulate junk, garbage, noxious or unsightly weeds; heavy equipment, a derelict vehicle, vessel, equipment or machinery, or otherwise permit such property to become dangerous, dilapidated or unsafe, or permit such property to become visibly unsightly from the street or from the adjoining premises.

(A) It shall be unlawful, and a violation of this Ordinance, for any responsible parties of any property, lot or parcel of real estate within the Town to maintain thereon a dangerous, dilapidated or unsafe structure as defined herein.

(B) It shall be unlawful, and a violation of this Ordinance, for any responsible parties of any property, lot or parcel of real estate within the Town, to maintain junk, garbage, noxious or unsightly weeds, or heavy trash, as defined herein, to be deposited on, grown on, or remain on any such lot or parcel of real estate, or permit the existence of any condition on such premises.

(C) It shall be unlawful, and a violation of this Ordinance, for any responsible parties of any property, lot or parcel of real estate within the Town to allow any part of such property, visible from the street or adjoining premises to become unsightly.

(D) It shall be unlawful, and a violation of this Ordinance, to deposit and/or leave garbage (rubbish, refuse (organic or inorganic), debris or waste) material in a location or

condition where it is exposed to, scattered by, and/or otherwise dispersed by the *elements*; also not located or stored in such a manner where it creates a cloud of particles, unsightly conditions or health hazards.

(E) It shall be unlawful, and a violation of this Ordinance to maintain or leave a derelict vehicle, vessel, item of equipment or machinery on any property, lot or parcel of real estate within the Town, visible from the street or adjoining premises.

(F) It shall be unlawful for any person to cast, place, or deposit any garbage or junk upon any premises not their own, unless given permission by the responsible party. It shall however be the responsible party's duty to ensure the property, premises, lot, building or structure complies with this Ordinance.

(G) The responsible parties shall be jointly and severally liable for any such violation(s).

SECTION THREE **INSPECTION: NOTICE**

(A) The Town Manager or the Town Marshal, or any employee as delegated by such persons, shall have the authority to inspect from time to time the various properties, lots and parcels of real estate, buildings and structures lying within the Town limits.

(B) Any written complaint or written report of properties, lots and parcels of real estate, buildings and structures failing to comply with this Ordinance shall be referred to the Town Manager. The Town Manager, or her/his designee, shall have the authority and obligation to inspect the property, lot, parcel, building or structure, providing that the same lies within the boundaries of the Town.

(C) If the condition of the properties, lots and parcels of real estate, buildings and structures inspected under Section 3, Paragraphs A or B, are believed to constitute a violation of this Ordinance, the inspecting party – Town Manager, Town Marshal, or other designated person – shall prepare a report identifying the nature of the violation, pictures documenting the violation, and a recommendation of the general measures needed to be taken to come into compliance. The report shall be promptly provided to the Town Manager. The Town Manager shall then issue a notice of violation as provided in this Section.

(D) Except as provided below, notice of any alleged violation(s) shall be provided by certified mail to the property owner(s) as the name(s) and address appears on the tax statement from the Madison County Assessor's Office and to any other identified responsible parties to the property address. Notice under this provision shall inform such persons of the alleged violation(s), the general measures to be taken to bring the property into compliance, the date in which the property must be brought into compliance, which shall not be less than 30 days from the date of the notice, unless the directive declares the property, lot, parcel, building or structure

to be dangerous, in which case it may specify a shorter period, and inform such persons of his/her right to appeal the violation(s) and be heard on the matter by the Town Court.

- In cases where public safety may be an issue, the Town Manager may take immediate necessary action to prevent danger or to remove a dangerous structure or condition, with the assistance of law enforcement as may be deemed necessary or appropriate.
- If any lot is not occupied or leased, and the owner is a nonresident of the County, or his/her residence is unknown, or if notice is returned by the Postal Department by cause of inability to make delivery thereof, the Town Manager, shall cause a notice for compliance, to be published in the Pendleton Times Post (or another newspaper allowed under Indiana Code § 5-3-1) three times, with each notice being no less than seven and no more than fourteen days apart.

(E) Any directive for action to remedy the condition, under Section 3, Paragraph D, may be appealed by a responsible party to the Town Court. One responsible party who files a notice of appeal is a constructive request for appeal on behalf of all responsible parties. An appeal may be procured by submitting to the Town Court, a written notice requesting appeal. The written notice of appeal must:

- Identify the property and violation in question;
- Identify the responsible party by name, address, and telephone number;
- Identify the responsible party's interest in the property, i.e. owner, occupant, etc.
- Identify all pertinent facts as to why the determination is in error;
- Identify action the party is taking to address the violation, if any;
- Be submitted within 30 days of the date of the notice issued under Section 3, Paragraph D, or within 30 days of the last publication of notice issued under Section 3, Paragraph D, notice was made by publication.

(F) Upon a request for appeal, a public hearing before the Town Court shall be scheduled as soon as practical, but no less than 30 days after receipt of the request for appeal.

- Notice of the Hearing provided under this provision shall be delivered to the person(s) giving notice of the appeal by depositing same in the U.S. Mail, postage prepaid at least 10 days prior to the hearing.

SECTION FOUR
DEMOLITION

Before the Town can direct or authorize demolition of a building or structure for violation of this Ordinance, the following must occur:

- The owner must be given not less than 10 days notice of the time, date and place of a meeting at which a demolition order shall be considered.
- The owner must be given an opportunity to appear and be heard before any demolition order can be made.
- The Town must make application to a court for a declaration that a property is dangerous and/or unsightly, and for an order specifying that the condition be remedied by demolition.
- Efforts to remedy the violation by lesser means shall have been exhausted or otherwise established as ineffective to remedy the violation

SECTION FIVE
FAILURE TO ABATE

(A) If a responsible party of any lot or parcel of real estate shall fail and/or refuse to remove or abate such violation(s) after receiving notice for compliance, as provided in Section Three above, the Town Manager (or Town Court if the responsible party(ies) appeals the notice and the violation is upheld) shall have the authority to cause the same to be removed or otherwise abated.

(B) Where the Town Manager or Town Court does order a removal or abatement, the Town by its officers, employees, contractors, or agents may enter on the property and effect the removal or clearance at the expense of the owner of record of the property. The cost of the removal is due and payable immediately.

(C) When the Town has effected the removal or abatement of the violation, the Town Manager shall prepare a written and itemized statement showing the actual cost of the work performed and the same shall be billed to the property owner of record. The cost of the work shall include all administrative costs, including but not limited to providing notice and attorneys' fees, incurred by the Town in regards to such violation(s) and shall be payable at the time of receiving statement of costs.

(D) When the full amount due is not paid by the owner within 30 days after the receipt of the billing statement the Town Manager shall cause to be recorded in the County Recorder's

Office a sworn statement showing the cost and expense incurred for the work, the date the work was done, and the location of the property on which the work was done.

- The recordation of such sworn statement shall constitute a lien and privilege on the property, and shall remain in full force and effect for the amount due on principal and interest, plus costs of court, if any, for collection, until final payment has been made.
- The costs and expenses shall be collected in the manner fixed by law for the collection of real estate taxes and further shall be subject to a delinquency penalty the same as real estate taxes in the event same is not paid in full on or before the date the tax bill on which the charges appear becomes delinquent.
- Sworn statements recorded in accordance with the provisions hereof shall be prima facie evidence that all legal formalities have been complied with and that the work has been done properly and satisfactorily, and shall be full notice to every person concerned of the property designated or described in the statement and that the same is due and collectible as provided by law.
- The Town Council may also pursue collection through any other lawful means, including Court proceedings, if it so desires, if the full amount is not paid within 30 days.

SECTION SIX **PENALTIES**

In addition to the remedies provided above, any person violating the provisions of this Ordinance shall be subject to a penalty of one hundred dollars (\$100.00) for the first notice of violation. For subsequent notices of the same violation, after the violation has been abated either by the owner or the Town, the initial penalty shall be increased by one hundred dollars for each additional notice of the same violation – e.g., \$200.00 for the second violation, \$300.00 for the third violation, and so on. In addition, there shall be an additional penalty of ten dollars (\$10.00) per day for each day of non-compliance after the period for compliance has expired, up to a maximum fine of Two Thousand Five Hundred Dollars (\$2,500.00) payable to the Town of Pendleton. Such penalty shall bear the maximum interest allowed by law from the date due.

SECTION SEVEN **REPEAL OF CONFLICTING ORDINANCES**

All previous ordinances or any parts thereof in conflict with this Ordinance are hereby specifically repealed.

SECTION EIGHT
TIME OF EFFECT

This Ordinance shall be in full force and effect from and after its passage, signing by the Town Council, and publication as required by law.

SECTION 2. Any Chapter, Section or Subsection of the Code that is not specifically amended or restated herein remains in full force and effect.

SECTION 3. If any provision in this Ordinance is declared invalid, the remaining provisions of the Ordinance shall remain in full force and effect.

SECTION 4. Any ordinances or provisions thereof that are inconsistent with this Ordinance are hereby superseded.

SECTION 5. This Ordinance shall be in full force and effect upon passage and publication as required by law.

[Signature Page Follows]

Passed and adopted by the Town Council of the Town of Pendleton, Indiana, by a vote of 5 in favor and ___ opposed this 10th day of NOVEMBER, 2016.


THE TOWN COUNCIL OF THE
TOWN OF PENDLETON, INDIANA




Robert C. Jones, President



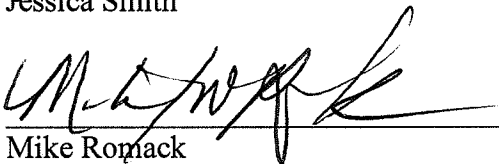
J. Chad Wolfe, Vice President



Chet Babb

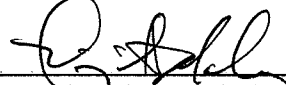


Jessica Smith



Mike Romack

ATTEST:



Virgil Mabrey, Clerk-Treasurer
of the Town of Pendleton, Indiana