

NOVEMBER 2, 2015

REGULAR SESSION

The LaGrange County Commissioners met in Regular Session on Monday, November 2, 2015, in their meeting room, County Office Building, 114 W. Michigan Street, LaGrange, Indiana, 46761, at 8:30 a.m., with the following present: Commissioners, Larry Miller, Terry Martin, Kevin Myers; and LaGrange County Auditor, Kay M. Myers. President Larry Miller called the meeting to order and led those present in saying the Pledge of Allegiance to the Flag. Mr. Terry Martin made a motion to adopt the proposed agenda with flexibility. Mr. Kevin Myers seconded the motion and it carried unanimously.

NUISANCE ORDINANCE

County Attorney Kurt Bachman request on behalf of the nuisance officer the following nuisance ordinance:

ORDINANCE NO. 2015-11-02

AN ORDINANCE REPEALING ORDINANCES 6-8.1-93, 2007-4-2B, AND 2008-3-17 AND 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;

WHEREAS, Indiana Code § 36-8-2-4 allows local governments to regulate conduct, use or possession of property that might endanger the public health, safety, or welfare;

WHEREAS, LaGrange County adopted Ordinances 6-8.1-93, 2007-4-2b, and 2008-3-17 providing for the abatement and removal of public nuisances; and

WHEREAS, the Board of Commissioners of the County of LaGrange desires to repeal the prior nuisance ordinances and establish a new procedure for the removal and abatement of public nuisances.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF LAGRANGE AS FOLLOWS:

SECTION I – REPEAL

The Board of Commissioners of the County of Lagrange hereby repeals Ordinances 6-8.1-93, 2007-4-2b, and 2008-3-17.

SECTION II – DEFINITIONS

A. Department: The LaGrange County Sheriff’s Department has been designated and assigned as the 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 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 Indiana Code § 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. Construction, demolition, or other remains not currently being used or anticipated being used in the next six (6) months in remodeling or in a business;
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, graffiti, or otherwise unsightly;

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, 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;
17. Whatever is (1) injurious to health; (2) indecent; (3) offensive to the senses; or (4) an obstruction to the free use of property; so as essentially to interfere with the comfortable enjoyment of life or property, is a nuisance.

SECTION III – NOTICE/ORDER

A. The Department and/or Enforcement Officer, after providing initial notice by either a tag or more formal notice and efforts to obtain compliance, 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 IV 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, which should be thirty (30) days unless an emergency situation exists and a shorter time is given, measured from the time when 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.

B. In addition to an Order, the Department may, at the discretion of the Department and/or Enforcement Officer, issue a citation to the owner of the property housing the nuisance for each violation. Each nuisance shall constitute a separate violation and each day a nuisance exists thereafter shall constitute a separate violation. The amount of the monetary penalty for each violation shall be determined from amounts stated in the most current version of the Nuisance Fee Schedule as kept by the Department.

C. The current Nuisance Fee Schedule is attached hereto and incorporated herein as Exhibit “A.” The current Nuisance Fee Schedule shall be kept by the Department.

SECTION IV – SERVICE OF DOCUMENTS

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 a return or affidavit stating that he or she 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 return or affidavit must be kept in the 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 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 III of this Ordinance and that a copy 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.

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SECTION V – 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 VI – JUDICIAL REVIEW

- A. An action taken under Section V 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 thirty (30) 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 VII – ENFORCEMENT OF ORDER

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

1. An Order has been issued to each person having a substantial property interest in the property that is the subject of the order; and
2. The Enforcement Officer has made reasonable efforts to provide service in a manner prescribed by Section IV 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 VI 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 Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) or less, 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 Board of Commissioners of the County of LaGrange.
2. If the estimated cost of work is Two Thousand Five Hundred and 01/100 Dollars (\$2,500.01) 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, and the owner of any junk vehicle, 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.

SECTION VIII - COSTS OF REMOVAL

When action required by an order is performed by the Department or by a contractor acting under this Ordinance, each person who holds a substantial 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 LaGrange 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, and postage costs.

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 may take lawful action to collect the amount owed, including filing a lawsuit or other steps. Judgments entered under this Ordinance may be enforced in the same manner as all other judgments are enforced.

SECTION IX – 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 X – RECORDING

The Department may record in the LaGrange County Recorder’s Office orders issued under this Ordinance, statements of rescission, and records of action taken by the Enforcement Board under this Ordinance. The recorder may not charge a fee for recording these items.

SECTION XI - 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 XII - 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 XIII - 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 XIV - PASSAGE

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

EXHIBIT “A”

LAGRANGE COUNTY NUISANCE FEE SCHEDULE

\$100.00	1. Litter;
\$100.00	2. Grass and weeds over twelve (12) inches high, but not including small trees and bushes;
\$100.00	3. Boxes, appliances, furniture, household items and tires, etc., but not stock or inventory used in conducting agricultural activities in a properly zoned area;
\$500.00	4. Construction, demolition or other remains not currently being used or anticipated being used in the next six (6) months in remodeling or in a business;
\$100.00	5. Accumulated garbage and trash;
\$100.00	6. Vehicle parts and scrap metal (including but not limited to those defined at I.C. 9-22-1-1 et seq.);
\$100.00	7. Structures defaced with paint, graffiti, or otherwise unsightly;
\$100.00	8. Any wastewater, filth, offal, garbage, rubbish, human excrement, which is deposited, allowed or caused to be upon any public or private property;
\$100.00	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

- \$100.00 pool upon any private or public property;
- \$500.00 10. Any dead domestic or wild animal;
- \$100.00 11. Any real or personal property that is infected with contagious disease and is likely to cause an immediate health hazard;
- \$100.00 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;
- \$100.00 13. Trees, shrubbery, weeds, or other matter obstructing public ways, or causing visual barriers which create vehicular traffic or pedestrian safety hazards;
- \$100.00 14. The unauthorized placement of fences, signs, shrubbery or barriers within the county road right of ways;
- \$100.00 15. Junk vehicles as defined by this Ordinance, except in lawfully operated junkyards that have been properly zoned and licensed;
- \$100.00 16. Industrial machinery, unless located on land that is properly zoned for such use and owned by persons actively engaged in industry.
- \$100.00 17. Whatever is (1) injurious to health; (2) indecent; (3) offensive to the senses; or (4) an obstruction to the free use of property, so as essentially to interfere with the comfortable enjoyment of life or property, is a nuisance.

Mr. Terry Martin motioned to approve the ordinance. Mr. Kevin Myers seconded the motion which passed unanimously. Mr. Terry Martin motioned to waive second reading. Mr. Kevin Myers seconded the motion which passed unanimously.

GAS CONTRACT

Attorney Bachman presented a contract with Interstate Gas Supply Inc for consideration. Attorney Bachman request authority to provide written notice to Just Energy terminating their contracts retroactive to October 22, 2015. Mr. Terry Martin motioned to authorize the termination of contract with Just Energy. Mr. Kevin Myers seconded the motion which passed unanimously. Mr. Terry Martin motioned to approve the contract with Interstate Gas Supply Inc. at a rate of 0.379. Mr. Kevin Myers seconded the motion which passed unanimously. Mr. Kevin Myers motioned to authorize signing the contract. Mr. Terry Martin seconded the motion which passed unanimously.

COUNCIL ON AGING FACILITY GRANT

Attorney Bachman informed the Commissioners the grant agreement is ready for signature. Attorney Bachman stated the grant amount of \$400,000 is for the renovation of the Council on Aging building. Mr. Terry Martin motioned to approve the grant agreement and authorize signing any documents related to the grant. Mr. Kevin Myers seconded the motion which passed unanimously.

DEFIBRILLATORS

Ms. Rita Lehner request to purchase replacement batteries and pad for the defibrillators county currently has as well as a unit for the courthouse. The total cost is 2068.00. Mr. Terry Martin motioned to approve the purchase to be paid out of riverboat. Mr. Kevin Myers seconded the motion which passed unanimously.

VEHICLES TO AUCTION

Mr. Terry Martin motioned to approve the following vehicles for auction on December 12 at the MEC:
Two (2) 1997 New Holland Ford tractors Model # TS100
One (1) 2000 Volvo Dump Truck Tandem Model # WG64 (vin 2V5JC2GF0YN869388)
One (1) 2000 Volvo Dump Truck Tandem Model # WG64 (vin 4V5JC2GF0YN869391)
One (1) 1999 Chevrolet Lumina (vin 2G1WL52M5X9176937)
One (1) 2002 Ford Explorer (vin 1FMZU72K92UD35459)
Mr. Terry Martin motioned to approve the selling of the equipment as is. Mr. Kevin Myers seconded the motion which passed unanimously.

COMMITTEE REPORTS

Mr. Terry Martin reported on the Park Board meeting
Mr. Larry Miller reported on the plan commission and soil & water meetings.

ACCOUNTS PAYABLE VOUCHERS

Mrs. Kay M. Myers, County Auditor, presented the Accounts Payable Vouchers. Mr. Terry Martin motioned to approve. Mr. Kevin Myers seconded the motion which passed unanimously.

MINITUES

Mr. Kevin Myers made a motion to approve the September 29 and October 20, 2015 executive sessions, the Special Session held on October 21 and the October 19th regular meeting minutes. Mr. Terry Martin seconded the motion which passed unanimously.

MEMORANDUM

Mr. Terry Martin motioned to approve the memorandum for the October 27 meeting. Mr. Kevin Myers seconded the motion which passed unanimously.

2016 MATERIAL BIDS

Auditor Kay Myers opened the following bids:

<u>REQUISITION</u>	<u>COMPANY</u>	<u>LOCATION</u>
Requisition #3 Bid - Paint Striping	The Airmarking Co., Inc,	Rochester, IN
Requisition #4 Bid - Asphalt & Emulsified Ashphalt	Ahphalt Materials, Inc., The Klink Group, Pierceton Trucking Co.,	Warsaw, IN Ashley, IN Waswaw, IN
Requisition #5 Quote - Bituminous Patching Material	API Construction Corp, Brooks Construction, Pulver & Sons, Walsh & Kelly,	LaOtto, IN Ft Wayne, IN Albion, IN South Bend, IN
Requisition #7 Quote - Limestone	Elkhart County Gravel, Hanson Aggregates, Irving Sand & Gravel Co, Irving Materials, Inc., Stone Street Quarries,	Elkhart, IN Angola, IN Ft Wayne, IN Huntington, IN Hoagland, IN
Requisition #7A Quote Sand & Gravel	Elkhart County Gravel, Hanson Aggregates, Irving Sand & Gravel Co, Stone Street Quarries,	Elkhart, IN Angola, IN Ft Wayne, IN Hoagland, IN
Requisition #8 Quote - Pipe	Civil Con, Metal Culvert Inc., St. Regis Culvert Inc.,	Jeffersonville, IN Jefferson City, MO Indianapolis, IN
Requisition #10 Bid - Calcium Chloride	Great Lakes Chloride, Inc	Warsaw, IN
Requisition #26 Quote - Hourly Equipment	Brooks Construction Robert Henschen Irving Sand & Gravel Co, N. Miller Excavating,	Ft Wayne, IN Ft Wayne, IN Shipshewana, IN
Requisition #27C Bid - Treated Bridge Timber	American Timber Bridge	Portage, MI

Mr. Terry Martin motioned to take the bids under advisement. Mr. Kevin Myers seconded the motion which passed unanimously.

SUBDIVISION PLATS

The following subdivision plats were presented for approval:

Darrow’s Subdivision

There are two lots in this subdivision, in Johnson Township, located at 0605 E 450 S, Wolcottville. Section 18, Township 36N, Range 10E. The owners are Byron & Renee Keck. Mr. Terry Martin made a motion to approve the plat. Mr. Kevin Myers seconded the motion and it carried unanimously.

Thrown Shoe Butte

There is one lot in this subdivision, in Clearspring Township, located 7630 S 300 W, Topeka. Section 33, Township 36N, Range 9E. The owners are Vernon & Katheryn Yoder. Mr. Kevin Myers made a motion to approve the plat. Mr. Terry Martin seconded the motion and it carried unanimously.

Blue Herron Subdivision

There is one lot in this subdivision, in Johnson Township, located 2265 S 00 EW, LaGrange. Section 06, Township 36N, Range 10E. The owners are Nelson & Ada Miller. Mr. Terry Martin made a motion to approve the plat. Mr. Kevin Myers seconded the motion and it carried unanimously.

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CORRESPONDENCE

Strand Associates – August 2015 Groundwater Monitoring Report.

Indiana Department of Environmental Management – Notice of Approval– Springfield Woodshavings, LLC 087-36024-00680

Indiana Department of Environmental Management – Notice of Approval – DS Corp - 087-35928-00086

Indiana Department of Environmental Management – Notice of Public Comment – Excel Finishings, LLC 087-36230-00682

Indiana Department of Environmental Management – Notice of Approval –Nishikawa Cooper, LLC 087-36180-00031

Indiana Department of Environmental Management – Notice of Public Comment – Nishikawa Cooper, LLC 087-36182-00031

ADJOURNMENT

There being nothing further to come before the Board at this time, Mr. Terry Martin made a motion to adjourn and meet on any subsequent day necessary to carry on the business of the Board. Mr. Kevin Myers seconded the motion and it carried unanimously.

Larry N. Miller

Terry A. Martin

Kevin Myers

ATTEST:

Kay M. Myers
LaGrange County Auditor