

ORDINANCE NO. 6-8.1-93

**AN ORDINANCE AMENDING THE COUNTY CODE BY PROVIDING FOR THE
ABATEMENT AND REMOVAL OF PUBLIC NUISANCES WITHIN THE
UNINCORPORATED AREAS OF LAGRANGE COUNTY**

WHEREAS, in the unincorporated 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.

NOW, THEREFORE, BE IT ORDAINED BY THE LAGRANGE COUNTY COMMISSIONERS OF THE COUNTY OF LAGRANGE, STATE OF INDIANA THAT THE LAGRANGE COUNTY CODE BE AMENDED BY ADDING THE FOLLOWING:

- (a) The LaGrange County Ordinances are amended by adding a new chapter to be known as the Ordinance for the Abatement of Public Nuisances as permitted by Indiana Code 36-8-2-4.
- (b) Public nuisances are defined in accordance with I.C. 36-8-2-4 and may include but not limited to the following:
 - (1) litter;
 - (2) grass and weeds over twelve (12) inches high, but not including small trees and bushes (applicable only on subdivision lots of less than three (3) acres in size);
 - (3) boxes, appliances, furniture, household items and tires, etc. which have accumulated outside a storage structure; said nuisances do not include machinery, stock or inventory used in conducting agricultural activities in a properly zoned area.
 - (4) demolition remains;
 - (5) accumulated garbage and trash;

- (6) automobile 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 or graffiti;
 - (8) any waste water, 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 which 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.
- (c) The LaGrange County Health Office, Zoning Administrator and the Planning and Zoning Department is hereby designated and assigned as the county departments responsible for the abatement and removal of public nuisances within the unincorporated areas of the County of LaGrange, Indiana and said Department is hereby granted all powers reasonable and necessary for the performance of its responsibilities under this Ordinance.
- (d) If the Zoning Administrator or the appropriate LaGrange County Health office or the so designated employees of such Departments determine after an inspection that a

public nuisance exists, such nuisance shall be abated or removed in accordance with the provisions set forth in this Ordinance.

If the nuisance to be abated is an abandoned motor vehicle, said enforcement official or any other officer as defined under I.C. 9-22-1-2 may pursuant to I.C. 9-22-1-1 et seq. utilize the abandoned motor vehicle provision of state law in lieu of this ordinance. In addition to the pursuit of the property owner pursuant to this ordinance, the enforcement officials may also pursue the owner of the abandoned vehicle or parts pursuant to I.C. 9-22-1-4. Pursuant to I.C. 9-22-1-5 if the possessory party is other than the named owner of the vehicle and no right to possession can be established, the vehicle shall be removed and stored pursuant to I.C. 9-22-1-1 et seq. The responsible officer shall notify the Bureau of Motor Vehicles as is required at I.C. 9-22-1-6. Searches pursuant to I.C. 9-22-1-20 shall be conducted, and if the Bureau cannot determine the ownership, a declaration of abandonment shall be provided to the responsible officer. Once a vehicle has been removed for storage, and before disposal, any person who can properly identify themselves as owning or holding a lien on the vehicle shall be entitled to possession of same and a release. Pursuant to I.C. 9-22-1-8 and 9-22-1-9, a copy of that release will be forwarded to the Bureau of Motor Vehicles. If an owner or lienholder does not appear to claim said vehicle and pay all costs, the Bureau of Motor Vehicles pursuant to I.C. 9-22-1-10 shall declare the vehicle abandoned and provide for disposal pursuant to this ordinance.

The responsible officer shall prepare notice tags, reports, and photographs all as required by I.C. 9-22-1-11 and I.C. 9-22-1-12 for purposes of the hearing file. If a vehicle is valued at less than \$100.00 I.C. 9-22-1-13 shall be utilized for disposition; and if the vehicle is valued at more than \$100.00 I.C. 9-22-1-14 shall be utilized. Vehicles abandoned on rental property shall be disposed of pursuant to I.C. 9-22-1-15, 9-22-1-16 and 9-22-1-17.

Pursuant to I.C. 9-22-1-18 any vehicle abandoned on private property shall be disposed of as provided therein. Abandoned vehicle reports shall be filed with the Bureau of Motor Vehicles as is required by I.C. 9-22-1-19. As is provided at I.C. 9-22-1-21, if a vehicle or parts are in such condition that a vehicle identification number

or other means of identification are not available to determine the person who owns or holds a lien on the vehicle, the vehicle may be disposed of without notice provided that the property owner shall be liable for all costs incurred in disposing of said vehicle pursuant to the provisions of this ordinance.

Pursuant to I.C. 9-22-1-22, the Bureau may sell said vehicle or parts at a public sale. Pursuant to I.C. 9-22-1-23, the County may provide notice to the owner and person holding a lien as to any abandoned vehicle, and may sell the vehicle or parts to the highest bidder at a public sale providing notice as is required by I.C. 9-22-1-23. The County may sell the motor vehicle or parts as unclaimed property pursuant to I.C. 36-1-11. If in fact a vehicle is sold by the County or the Bureau, any person so purchasing same shall be furnished a Bill of Sale and pursuant to I.C. 9-22-1-24 may obtain the appropriate Certificate of Title. Pursuant to I.C. 9-22-1-25, the costs of removal and storage of an abandoned vehicle not claimed by the person owning or holding a lien on said vehicle shall be paid from the abandoned vehicle account to be established by the LaGrange County Council. All charges shall be consistent with the schedule of charges published by the LaGrange County Commissioners as amended from time to time. The proceeds of the sale of an abandoned vehicle or parts pursuant to this ordinance shall be credited against the costs of removal, storage and disposal of the vehicle. Any proceeds remaining after the application of the above-referenced costs shall pursuant to I.C. 9-22-1-27 be deposited with the County Treasurer in the LaGrange County Abandoned Vehicle Fund. This fund shall be the same fund utilized for purposes of making the payment of costs above referred to, as well as, bills of sale and other necessary costs. A separate accounting of each sale shall be maintained in order that any expenses incurred which are not covered by the proceeds above referred to may be pursued against the owner of said real estate pursuant to the provisions of this ordinance enumerated below. The LaGrange County Commissioners may from time to time employ personnel necessary to carry out the provisions of this ordinance.

- (e) The Department may issue an order requiring action 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 Subsection (u) of this Ordinance. The order must contain:

- (1) the name of the person to whom the order is issued;
 - (2) the address, or the tax parcel number of the property that is the subject of the order;
 - (3) the action the order requires;
 - (4) the period of time in which the action is required to be accomplished, measured from the time when the notice of the order is given;
 - (5) a statement indicating the exact time and place of the hearing, and that the person to whom the order was issued is entitled to appear at the hearing with or without legal counsel, present evidence, cross examine opposing witnesses and present arguments;
 - (6) a statement briefly indicating what action can be taken by the Department if this order is not complied with;
 - (7) a statement indicating the obligation created by Subsection (aa) of this Ordinance relating to notification of subsequent interest holders and enforcement authority; and
 - (8) the name, address and telephone number of the Department.
- (f) A hearing must be held relative to each order of the Department. The hearing shall be conducted by the Ordinance Enforcement Hearing Officer, as appointed by the LaGrange County Board of County Commissioners.
- (1) the hearing shall be held on a business day no earlier than ten (10) days after notice of the order is given;
 - (2) the person to whom the order was issued, any person having a substantial property interest in the property which 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;
 - (3) at the conclusion of any hearing at which a continuance is not granted, the Hearing Officer shall make findings and take action to:
 - (a) affirm the order;
 - (b) rescind the order; or

(c) 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.

(4) the record of the findings made and action taken by Hearing Officer at the hearing shall be available to the public upon request. However, neither the Department nor the Hearing Officer is required to give any person notice of finding and action.

(g) An action taken under Subsection (f) of this Ordinance is subject to review by the circuit or superior court of the County of LaGrange, Indiana, on the request of:

- (1) any person who has a substantial property interest in the property which is the subject of the public nuisance order; or
- (2) any person to whom the order was issued.

(h) A person requesting judicial review under this Subsection (g) must file a verified complaint including the findings and the action taken by the Hearing Officer. The complaint must be filed within ten (10) days of the Hearing Officer's official action.

(i) An appeal under this section is an action de novo. The court may affirm, modify, or reverse the action taken by the Hearing Officer.

(j) The department may cause the action required by an order to be performed by county personnel or a private contractor if:

- (1) an order has been issued to each person having a substantial property interest in the property cited as a public nuisance; and,
- (2) service of an order, in the manner prescribed by Subsection (u) of this Ordinance, has been made on each person having a substantial interest in the property which is the subject of the order; and,
- (3) the Hearing Officer has affirmed or modified the Order in accordance with the provision of this section; 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 Subsection (g) of this Ordinance

(k) 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, unless the Department has received confirmation in writing that enables it to make service as required under subsection (u) of this Ordinance by a method other than publication.

(l) 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 less than five thousand dollars (\$5,000) 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 LaGrange County Board of County Commissioners.

(2) if the estimated cost of work is five thousand dollars (\$5,000) or more this work must be let at public bid to a qualified contractor.

(m) Notices of work to be performed must be given to all persons with a substantial property interest, 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 after a hearing as a lien against all persons having a fee interest or life estate interest in the property.

(n) When action required by an order is performed by the Department or by a contractor acting under Subsection (1) of this Ordinance, each person who held a fee interest or life estate 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 under Subsection (1) of this Ordinance.

(2) The administrative cost to process an order that was performed by the County, including but not limited to following: cost to determine persons with substantial property interest, cost of notices, cost to secure bids, cost of hearings, Hearing Officer wages, salaries of

employees, and any cost of paper, office supplies and office area.

- (o) If all or any part of the costs listed in Subsection (n) of this Ordinance remain unpaid for any public nuisance property (other than properties owned by a governmental entity) for more than fifteen (15) days after the completion of the work, the Department shall prepare a record stating:
- (1) the name and last known address of each person who held a fee interest or life estate interest in the cited property from the time the order requiring the work to be performed was recorded to the time that the work was completed; and,
 - (2) the legal description, address or parcel number of the cited property that were the subject of work; and
 - (3) the nature of the work that was accomplished; and,
 - (4) the total cost of the work that was accomplished.
- (p) The Department shall swear to the accuracy of the record as detailed in Subsection (n) before the clerk of the circuit court and deposit the record in the clerk's office. Notice that the record has been filed and that a hearing on the amounts indicated in the record may be held must be sent to the persons named in the record, in the manner prescribed by Subsection (u) of this chapter.
- (q) If, within (30) days after the notice required by Subsection (p), a person named in the record files with the clerk of the circuit court a written petition objecting to the claim for payment and requesting a hearing, the clerk shall enter the cause on the docket of the circuit or superior court as a civil action, and a hearing shall be held on the question.
- (r) Issues that could have been determined under Subsection (g) of this chapter may not be entertained at this hearing. At the conclusion of the hearing, the court shall either sustain the petition or enter a judgment against the persons named in the record for the amounts recorded or for modified amounts.
- (s) If no petition is filed under subsection (q), the clerk of the circuit court shall enter the cause on the docket of the court and the court shall enter a judgment for the amounts stated in the record.
- (t) A judgment under Subsection (r) or (s) is a debt and a lien on all the real and personal property of the person named, or a joint and several debt and lien on the real and

personal property of the persons named. The lien on real property is perfected against all creditors and purchasers when the judgment is entered on the judgment docket of the court. The lien on personal property is perfected by filing a lis pendens notice in the appropriate filing office, as prescribed by the Indiana rules of trial procedure.

- (u) Judgments rendered under this section may be enforced in the same manner as all other judgments are enforced.
- (v) 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 an affidavit stating that he 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 affidavit must be placed on file with the enforcement authority.
 - (4) If, after a reasonable effort, service is not obtained by means described in subsection, service may be made by publishing a 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 Subsection (e) of this Ordinance and must also include a statement indicating generally what action is required by the order and that the exact terms of the order may be obtained from the enforcement authority.
- (w) 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.
- (x) 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 order of statement was recorded in accordance with (Subsection (aa) of this Ordinance; or,
 - (3) the enforcement authority has received neither written information nor actual notice of the identity of the person who holds a property interest in the public nuisance.
- (y) 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.
- (z) The enforcement authority shall record in the office of the county recorder orders issued under Subsection (e) of Subsection (u) of this Ordinance, statements of rescission issued under Subsection (f) of this Ordinance and records of action taken by the hearing authority under Subsection (f) of this Ordinance. The recorder may not charge a fee for recording these items.
- (aa) 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.

- (bb) Should any section, paragraph, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of said Ordinance shall not be affected thereby.
- (cc) This Ordinance shall be in full force and effect from and after its passage by the Board of County Commissioners and legal publication.

Passed by the County Commissioners of LaGrange County, Indiana this 8th day of June, 1993.

BOARD OF COUNTY COMMISSIONERS
OF LAGRANGE COUNTY, INDIANA

Freeman J. Lambright

Kirby L. Bollinger

Josephine Schrock

ATTEST:
Billie Wiard, Auditor