

**TOWN OF LAGRANGE**  
**ORDINANCE** 2007-09-4

**AN ORDINANCE ESTABLISHING NEW GUIDELINES AND PROCEDURES FOR  
THE ABATEMENT AND REMOVAL OF PUBLIC NUISANCES**

WHEREAS, in areas of the Town of LaGrange, Indiana (the "Town") public nuisances are, or may in the future be, detrimental to the public health, safety, welfare and comfort of the citizens of the Town; 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, and

WHEREAS, the Town Council (the "Council") of the Town is vested with the authority under Indiana Code §36-8-2-4 to promulgate legislation ensuring that public health, safety and welfare is preserved in the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LAGRANGE, INDIANA THAT THE FOLLOWING ORDINANCE BE ENACTED:

**SECTION I – DEFINITIONS**

A. Department: The Council shall designate a Town or County department, or other designee as being responsible for the enforcement of this Ordinance within the Town and grant to such all powers reasonable and necessary for the performance of its responsibilities under this Ordinance.

B. Enforcement Board: A board established to administer hearings regarding nuisance violations.

C. 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 Ordinance Enforcement Officer ("Enforcement Officer") that a car, 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.

D. Motor Vehicles: Includes, but shall not be limited to, cars, buses, semi-trucks, golf carts, all-terrain vehicles, motorized recreational vehicles, and motorcycles. Agricultural machinery

located on land properly zoned and owned by persons actively engaged in farming shall be exempt from this Ordinance.

E. Non-Motor Vehicles: Includes, but shall not be limited to, semi trailers, boats, non motorized recreational vehicles, and trailers of any kind.

F. Public Nuisances: Public nuisances are defined in accordance with I.C. 36-8-2-4 and may include, but shall not be 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. Demolition remains;
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 or graffiti;
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 road right of ways;
15. Junk Vehicles as defined by this Ordinance, due to the danger to public health from vermin and insects that inhabit such vehicles, and the danger to safety of children attracted by such vehicles, 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.

## **SECTION II – INITIAL ACTION AND NOTICE**

- A. When the Department determines that a public nuisance exists, the Department may:
1. Issue an order to the owner of the property housing the nuisance requiring action to be taken to remove the public nuisance and bring the property into compliance. Said order must be given in accordance with Section III of this Ordinance. The order must contain:
    - i. The name of the person to whom the order is issued; and

- ii. The address or the tax parcel number of the property that is the subject of the order; and
- iii. The action the order requires; and
- iv. The period of time of at least ten (10) days in which the action is required to be accomplished, measured from the time when the notice of the order is given; and
- v. A statement briefly indicating what action can be taken by the Department if this order is not complied with; and
- vi. A statement indicating the obligation created by this Ordinance relating to notification of subsequent interest holders and enforcement authority; and
- vii. The name, address and telephone number of the Department.

2. In addition to an order, the Department may, at the sole discretion of the Department, also 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.

### **SECTION III – SERVICE OF NOTICE**

A. Methods of Service: Citations, warnings, orders, notice of continued hearings, notice of a statement that public bids are to be let, and notice of claims for payment (the “documentation”) must be given by either:

- 1. Sending a copy of the documentation 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 documentation personally to the person to be notified; or
- 3. Leaving a copy of the documentation 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 documentation was issued, the nature of the documentation, and the date of service. The affidavit must be placed on 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 a notice of the documentation in the applicable public newspaper in the county where the property housing the nuisance is located. Publication may be made on consecutive days. If service of the documentation is made by publication, the publication must include the information required by Section II 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 Department.

C. Effective Date: The date when the documentation is considered given is as follows:

1. If the documentation 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 documentation 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.

#### **SECTION IV – HEARING**

If a person fails to comply with an order by the deadline established in the order, or a person has been issued a citation by the Department, a hearing must be held no earlier than ten (10) days after notice of the order or citation is given. The hearing shall be conducted by the Enforcement Board.

The person to whom the order and/or citation 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.

At the conclusion of any hearing where a continuance is not granted, the Enforcement Board shall make findings and take action to:

1. Affirm, rescind, or modify the order; and
2. Affirm, rescind, and/or suspend the citation penalties for a period of time while an individual is taking action as instructed by the order.

The record of the findings made and action taken by the Enforcement Board at the hearing shall be available to the public upon request. However, neither the Department nor the Enforcement Board is required to give any person notice of finding and action.

#### **SECTION V – JUDICIAL REVIEW**

An action taken under Section IV 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.

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

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 VI – ENFORCEMENT OF ORDER

### A. Removal of Nuisances Other Than Junk Vehicles

1. *Action to Bring Compliance.* The Department may take action so as to bring the property within compliance by means of Department resources or by a private contractor based on quotations received from a list of contractors approved to do such work by the Department. Notices of work to be performed must be given to all persons with a substantial interest in the property housing the nuisance 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.

### B. Removal of Junk Vehicles

1. *Action to Bring Compliance:* The Department may remove Junk Vehicles so as to bring the property within compliance by means of Department resources or by a private contractor based on quotations received from a list of contractors approved to do such work by the Department. 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 the Junk Vehicle, if known, 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.

#### 2. *Procedure for Removal of Junk Vehicles:*

- a. The Enforcement Officer shall cause the vehicle to be towed to a storage area.
- b. Within seventy-two (72) hours after removal of a Junk Vehicle to a storage area, the Enforcement Officer shall forward to the Bureau of Motor Vehicles (“Bureau”) a vehicle report containing the make, model, identification number, license plate number, and any other description of the vehicle. The vehicle report should contain a request that the Bureau advise the Enforcement Officer of the name and most recent address of the person who owns or holds a lien on the vehicle.
- c. The Enforcement Officer shall then by first class mail notify the property owner and, if known, the person who owns the vehicle, with a copy to each person who holds a lien on the vehicle that the vehicle has been towed (the “Notice of Towing”). Said Notice of Towing should indicate that the vehicle has been towed and impounded at a certain location and must be removed within thirty (30) days after the date of the mailing of the Notice of Towing and advise that the vehicle will be disposed of after that time. The Notice of Towing should also advise the person who owns or holds a lien on the vehicle that all costs incurred in removing and storing the vehicle are the person’s legal responsibility.

## SECTION VII - COSTS OF REMOVAL

### A. Costs for Nuisances other than Junk Vehicles.

When action required by an order is performed by the Department or by a contractor acting under this Ordinance, each person who holds a fee interest or life estate interest in the cited property from the time when the order requiring the work performed was issued 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 the Department, 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, Enforcement Officer wages, salaries of employees, and any cost of paper, office supplies and office area; and
3. All legal fees incurred in the enforcement of this Ordinance; and
4. The amount of the penalties incurred under any citation.

The Department shall issue the owner of the property a bill for the work completed, penalties incurred, as well as notice that the owner is entitled to a hearing on the amounts indicated.

If, within thirty (30) days after the notice required above, a person named in the record files with the clerk of the court in the County where the property is located 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.

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. A judgment entered shall become a lien on the property housing the nuisance or be enforceable as otherwise provided by law.

If no petition is filed, after thirty (30) days from issuing the bill, the Enforcement Officer may:

1. Record documentation with the County Recorder that states the name or names of the owner(s) of the property housing the nuisance, a description of the property as shown on the records of the County Auditor, and the amount of the delinquent fees. The amount of the delinquent fees or penalties, including any accrued interest, shall then constitute a lien on the property housing the nuisance and such lien shall be placed on the tax duplicate by the County Auditor and shall be collected in the same manner as delinquent taxes are collected; or
2. Seek reimbursement as otherwise provided by law.

### B. Costs for Removal of Junk Vehicles.

When action to remove a Junk Vehicle required by an order is performed by the Department or by a contractor acting under this Ordinance, each person who holds a fee interest or life estate interest in the cited property from the time when the order requiring the work performed was issued to the time that the work was completed, as well as the owner of the vehicle, 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 to remove and store the vehicle; and
2. The administrative cost to process an order that was performed by the Department, 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, Enforcement Officer wages, salaries of employees, and any cost of paper, office supplies and office area; and
3. All legal fees incurred in the enforcement of this Ordinance; and
4. The amount of the penalties incurred under any citation.

If the properly identified person who owns or holds a lien on a vehicle appears at the storage site within thirty (30) days after the mailing of the Notice of Towing and pays all costs incurred against the vehicle at that time, the vehicle shall be released. The Enforcement Officer shall notify the Bureau of all releases. Each release shall state the name, signature and address of the person who owns or holds a lien on the vehicle or parts, a description of the vehicle, the costs, and the date of release.

If the person who owns or holds a lien upon the vehicle does not appear within thirty (30) days after the mailing of the Notice of Towing, the Enforcement Officer may sell the vehicle. If the Department estimates that the vehicle has a value of less than \$500.00, or if the vehicle is in such a condition that the vehicle identification numbers 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 as the Department deems appropriate. Otherwise, the vehicle may be sold to the highest bidder at a public sale. Notice of the sale shall be given by publication in one newspaper one week before the sale.

The proceeds from the sale of a Junk Vehicle shall be applied to costs of removal, storage, and administrative costs, legal fees incurred by the Department, and penalties. Any remaining proceeds shall be remitted to the vehicle owner. If an outstanding balance exists after such sale, the Department shall issue the owner of the property and the owner of the Junk Vehicle a bill for the work completed, legal fees, penalties incurred, as well as notice that the owner of the property and owner of the Junk Vehicle is entitled to a hearing on the amounts indicated.

If, within thirty (30) days after the notice required above, a person named in the record files with the clerk of the court in the County where the property is located 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.

Issues that could have been determined under Section IV of this Ordinance 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. A judgment entered shall become a lien on the property housing the nuisance or be enforceable as otherwise provided by law.

If no petition is filed, after thirty (30) days from issuing the bill, the Enforcement Officer may:

1. Record documentation with the County Recorder that states the name or names of the owner(s) of the property housing the nuisance, a description of the property as shown on the records of the County Auditor, and the amount of the delinquent fees. The amount of the delinquent fees or penalties, including any accrued interest, shall then constitute a lien on the property housing the nuisance and such lien shall be placed on the tax duplicate by the County Auditor and shall be collected in the same manner as delinquent taxes are collected; or
2. Seek reimbursement from the property owner or vehicle owner as otherwise provided by law.

### **SECTION VIII – 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 IX - 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 X - 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.

Provisions of prior ordinances that are in conflict with this Ordinance are hereby repealed.

**SECTION XI - 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 XII - PASSAGE**

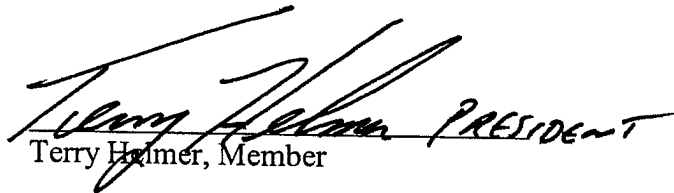
Unless as otherwise set forth herein, this Ordinance shall become effective upon promulgation according to law.

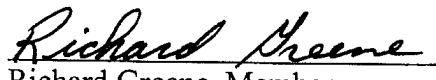
Ayes: \_\_\_\_\_  
Nays: \_\_\_\_\_  
Abstentions: \_\_\_\_\_

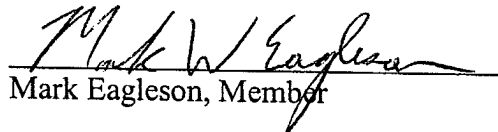
Adopted and Ordained this 4 day of September, 2007.

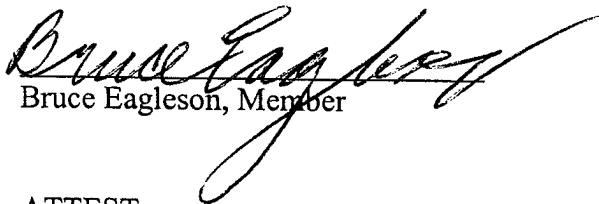
**TOWN COUNCIL OF THE TOWN  
OF LAGRANGE, INDIANA**

  
Gene Porter, Member

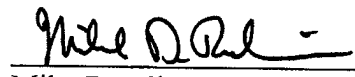
  
Terry Halmer, Member

  
Richard Greene, Member

  
Mark Eagleson, Member

  
Bruce Eagleson, Member

ATTEST:

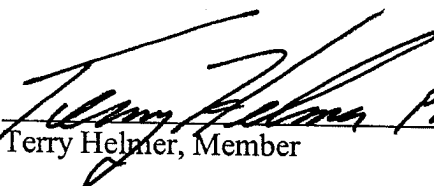
  
Mike Rowilson, Clerk-Treasurer


**WAIVER OF SECOND READING**

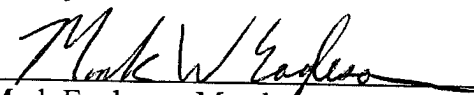
On motion duly made and seconded, the second reading of the foregoing Ordinance was unanimously waived and the Ordinance was deemed effective as of the date of passage.

**TOWN COUNCIL OF THE TOWN  
OF LAGRANGE, INDIANA**

  
Gene Porter, Member

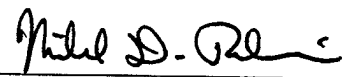
  
Terry Helmer, Member

  
Richard Greene, Member

  
Mark Eagleson, Member

  
Bruce Eagleson, Member

ATTEST:

  
Mike Rowlison, Clerk-Treasurer