

GENERAL ORDINANCE NO. 2012- 3

AN ORDINANCE AMENDING THE SWEETSER TOWN CODE
BY REGULATING AND PROVIDING FOR THE
ABATEMENT OF PUBLIC NUISANCES AND/OR ENVIRONMENTAL
PUBLIC NUISANCES

WHEREAS, the Town Council of the Town of Sweetser, Indiana, wishes to establish an ordinance to address the problem of public nuisances and environmental public nuisances within the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SWEETSER, INDIANA:

SECTION 1

The Sweetser Town Code is amended by adding a new Ordinance reading as follows by repealing General Ordinances 2007-6, 2007-7 and 2010-10

ARTICLE 1; TRASH AND PUBLIC NUISANCES

CHAPTER A: PURPOSE AND INTENT

It is hereby declared to be the purpose of this ordinance to protect the public safety, health, welfare and enhance the environment of the people of the Town of Sweetser by making it unlawful for any person to maintain, use, create, cause, place, deposit, leave or permit a nuisance to remain on any property and to promote the health and general welfare of the people of the Town of Sweetser within the Town of Sweetser.

CHAPTER B: DEFINITIONS

For the purpose of the ordinance, the following terms shall have the following meaning. The word "shall" will be mandatory and not merely directory.

- (1.) **AUTHORIZED EMPLOYEE:** An individual designated to make the necessary inspections or any individual (s) of any governmental department of the Town of Sweetser, which department has been designated by the Town Council of the Town of Sweetser to enforce this ordinance.
- (2.) **TOWN:** The Town of Sweetser
- (3.) **PUBLIC NUISANCE:** Whatever is injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property, so as essentially to interfere with the comfortable enjoyment of life or property.

The following is a list of public nuisances, but does not limit, the conditions constituting a nuisance under this Ordinance section:

- (a) Accumulation of rubbish, trash, refuse, junk and other abandoned materials, metals, lumber, ashes, filth, excrement, boards, slops, cinders, old tires, pallets, sawdust, wood or metal shavings, rubber, boxes, barrels, crates, cans, bottles, cartons, paper, debris, manure, grass cuttings, tree limbs, discarded food, clothing or any other offensive or disagreeable substance (meaning not orderly, stacked, packed, racked, stored or in containers, and with the following exception: compost pile);
- (b) Any condition which provides harborage of rats, mice, snakes and other vermin;
- (c) Disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of those odors and stenches; other than that which originate from customary agricultural or industrial practice;
- (d) Carcasses of animals or fowls, not disposed of within a reasonable time after death;
- (e) Buildings, structures or other places and locations where any violation of Federal, State or Town law is conducted, maintained or performed.
- (f) Accumulation of stagnant water;
- (g) Any abandoned, unattended or discarded freezer, refrigerator, or other container which has an airtight door or lid, without first removing the door or lid from the freezer, refrigerator or container;
- (h) Any building or other structure which is in such a dilapidated condition that it is unfit for human habitation or kept in such an unsanitary condition that it is a menace to the health of the people residing in the vicinity thereof, or presents a more than ordinarily dangerous fire hazard in the vicinity where it is located;
- (i) The unauthorized obstruction of any public street, road, alley or sidewalk.
- (j) The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, dead animals, creamery, industrial waste or other substances;
- (k) No trash, refuse or garbage shall be removed, hauled or conveyed within the Town limits, unless the vehicles used for removal, hauling or conveying is tightly covered by screen, and driven in a manner that, none of the contents may be spilled, dropped or blown from it;
- (l) It shall be a nuisance to permit furniture designed for interior use or household furnishing to be sit or be places outside any structure, unless placed for refuse collections;

- (m) It shall be a nuisance to maintain a swimming pool 42 inches or more deep without being secured by fences or gates;
- (n) It shall be a nuisance to fill land with materials other than that allowed by Indiana Code.

4. ENVIRONMENTAL PUBLIC NUISANCE: Any of the following constitute an environmental public nuisance.

- (a) Any growth of weeds, grass or other rank vegetation on private or governmental property which is neglected, disregarded or not cut, mowed or otherwise removed and/or which has attained a height of nine (9) inches or more; or
- (b) Any accumulation of dead weeds, grass, brush, trees or woody growth on private or governmental property; (with the following exception: compost pile); or
- (c) Any poison ivy, ragweed or other poisonous plant or plants detrimental to health, growing on any private or governmental property; or
- (d) Any vegetation, trees or woody growth on private property which due to its proximity to any governmental property, right-of-way or easement, interferes with the public safety or lawful use of the governmental property, right-of-way or easement or which has been allowed to become a health or safety hazard.

5. EXCLUDED PROPERTY: Any of the following may constitute excluded property from being considered an Environmental Public Nuisance.

- (a) Land cultivated in a commercial, agricultural or horticultural zone; or
- (b) An existing natural or developed forest which does not create a health or safety hazard; or
- (c) Vacant open lands, fields or wooded areas more than one hundred fifty (150) feet from occupied property; or
- (d) A nature habitat area more than one hundred fifty (150) feet from an occupied structure or adjacent property and determined not to be a health or safety hazard; or
- (e) A wetland designated by United States Department of Interior Fish and Wildlife Division on a National Wetlands Inventory Map.

6. GOVERNMENTAL PROPERTY: Real estate within the Town of Sweetser which is owned, leased, controlled or occupied by the United States, the State of Indiana, or any political subdivision thereof.

7. **OFFICER:** An employee of the government department of the Town of Sweetser so designated by the Town Council of the Town of Sweetser having law enforcement powers to issue a Town ordinance violation summons in order to enforce the provisions of this ordinance.

8. **OWNER:** Shall be presumed to be any one or more of the following:

- (a) The owner or owners in fee simple of a parcel of real estate including the life tenant if any; or
- (b) The record owner or owners as reflected by the most current records in the Township Assessors Office of the township in which the real estate is located ; or
- (c) The Purchaser or Purchasers of such real estate under any contract for conditional sale thereof.

9. **PRIVATE PROPERTY:** All real estate within the Town of Sweetser except governmental property.

10. **TRAFFIC HAZARD:** Any environmental public nuisance that is potentially dangerous to the existing traffic at the intersection in question as it may block or prohibit the view of any oncoming traffic.

CHAPTER C: APPLICATION OF CHAPTER

- 1. Each department or agency of the United States, the State of Indiana, or any political subdivision thereof, shall be required to keep governmental property free from public nuisances and/or environmental public nuisances.
- 2. Any owner of private property shall be required to keep that private property free from public nuisances and/or environmental public nuisances.

CHAPTER D: PROHIBITED ACTIVITY

It shall be unlawful for any owner of private property or government property to allow a public nuisance or an environmental public nuisance to exist on that property, unless that property is excluded property.

CHAPTER E: DETERMINATION OF VIOLATION; NOTICE OF VIOLATION

The Town Council shall forward any complaint to the authorized employee and/or officer for processing, who in turn, shall visually inspect the property in question. If the Officer determines that a violation exists they shall issue a notice of violation as provided below.

(1) **NOTICE TO ABATE:** When a complaint addresses a private property, the authorized employees through the Town Council shall cause a written "Notice to

Abate” to be served upon the owner of the property in questions, granting that owner a minimum of ten (10) calendar days in which to remove the public nuisance and/or environmental public nuisance. This notice shall be served by certified mail and regular mail to the owner and by a “Notice” place card conspicuously posted on the property which mail or notice shall contain the following information:

the address of the property, the date of the notice, the name of the Town of Sweetser enforcing this ordinance, the address of the Town, the telephone number of the Town authorized employee and/or officer and warning that if the public nuisance and/or environmental public nuisance is not removed within ten (10) calendar days after the posting the Town of Sweetser has the right to enter on the property to abate and/or correct the condition and bill the owner for costs incurred in so doing and/or file a court action against the owner for an Ordinance Violation.

(2) INSPECTION: Following the expiration of the “Notice to Abate” the authorized employee and/or officer shall visually inspect the property to determine whether such a public nuisance and/or environmental public nuisance still exists. If such nuisance exists, action shall be taken to abate the nuisance in accordance with this ordinance.

(3) EXCEPTION OF NOTICE TO ABATE REQUIREMENT: If the officer finds a violation which constitutes a “traffic hazard”, the authorized employee and/or officer shall find it necessary to waive the ten (10) day grace period and to abate the problem as soon as possible.

(4) PUBLICATION OF NOTICE ON CERTAIN ENVIRONMENTAL PUBLIC NUISANCES: In lieu of the notice required by Section 1 of Chapter E. above, the Town of Sweetser, through the authorized employee and/or officer, may publish notice in a newspaper of general circulation in the Town, on two separate occasions during the month of April, that if any environmental public nuisance violations are not corrected by June 1st of that year such violations shall be cut and/or removed by the Town of Sweetser and the owner of the property charged with the costs under the provision of Chapter F below. The publication shall contain all the information required of the “Notice to Abate” in public nuisance and/or environmental public nuisance violations such as weeds grass or other rank vegetation and shall allow the Town of Sweetser to correct such violations such as many times as is necessary to comply with this ordinance and charge the actual costs to the property owner.

(5) CONTINUOUS ABATEMENT NOTICE ON CERTAIN ENVIRONMENTAL PUBLIC NUISANCES: After providing an initial notice of the violation of an environmental public nuisance such as weeds, grass or other rank vegetation under Chapter E, Paragraph 1 above, a continuous abatement notice may be posted at the property at the time of abatement instead of certified mail or equivalent service. Such continuous abatement notice shall allow the Town of Sweetser to correct such violation as many times as necessary to comply with this ordinance and charge the actual costs to the owner.

(6) ABATEMENT BY TOWN ON GOVERNMENTAL PROPERTY: Where the complaint for nuisance addresses governmental property and it is determined by the authorized employee and or officer exists and threatens the health and/or safety of the people of the Town of Sweetser, the authorized employee and/or officer may direct the Town to immediately enter upon the premises and remove the public nuisance and/or environmental public nuisance.

CHAPTER F: ENFORCEMENT

(1) CITATION FOR VIOLATION: If the authorized employee and/or officer finds that a public nuisance and/or environmental public nuisance exists on private property and has not been abated as directed in the written notice to abate, that employee may cause a Citation for Violation of a Town Ordinance to be issued to the offending property owner. Any person who violates any provisions of this Code Section shall be deemed to have committed an Ordinance Violation and upon conviction, shall be fined not less than fifty dollars (\$50.00) and not more than two thousand five hundred dollars (\$2,500.00). Each day a violation continues after an action has been commenced to abate the nuisance that nuisance shall constitute a separate ordinance violation. No additional notice under this Code Section shall be required to initiate separate actions once an action has been against the person violating this Code Section.

(2) ABATEMENT BY TOWN ON PRIVATE PROPERTY: In addition to the issuance of a citation for the violation of a Town Ordinance under Section F (1), the employee may determine that an emergency exists and direct the Town to immediately enter upon the property and remove the public nuisance and/or environmental public nuisance. The employee shall thereafter furnish the Town Council with a statement of actual costs involved in the removal of such nuisance. The actual abatement may be assigned to a Town department or contracted out through standard procedures.

(3) RESPONSIBILITY OF OFFENDER FOR COSTS OF ENFORCEMENT: The Town Council shall make a statement of the costs incurred in eliminating the public nuisance and/or environmental public nuisance. The costs shall include: cost of removal of such public nuisance, administrative fees, attorney fees if court ordered enforcement is necessary and all recording fees associated with the collection of the outstanding balances.

The following fees shall be costs charged to:

(a) **Administrative Fees** **\$ 500.00**

These fees would cover such administration tasks as inspecting the property to determine violation, to determine compliance, determining ownership and preparing and mailing notices. (No fee would be charged if no violation is found).

(b) **Labor and Fees**

The following labor fees per person, per hour or fraction thereof for labor necessary to abate a public nuisance and/or environmental public nuisance.

Operator/Driver/Labor w/o CDL.....	\$28.00
Operator/Drive/Labor w/CDL	\$28.00
Supervisor.....	\$38.00
(Or current rate)	

(c) **Equipment Fees**

The following equipment fees per machine, per hour or fraction thereof, for the use of each piece of equipment necessary to abate the public and/or environmental nuisance.

Pick-up.....	\$20.00
Trash/Bush Hog.....	\$30.00
Backhoe.....	\$30.00
Dump Truck.....	\$30.00
Packer	\$30.00
Loader.....	\$30.00
(Or current rate)	

(d) Any land filling fees actually incurred to dispose of litter and waste products removed.

(e) Any other reasonable fees actually incurred in abating such nuisance. Said statement shall be delivered to the property owner(s) by 1st Class Mail. The owner(s) shall pay the amount noted to the Town of Sweetser within ten (10) days after receipt, which shall be deposited in the General Fund.

(4) Failure to Pay: If owner(s) fails to pay the amount within ten (10) days after receiving the statement, the Town Council may institute action necessary to collect the debt.

(a) A copy of all costs may be filed in the office of the Auditor of Grant County for the purpose of placing the amount claimed on the tax duplicate against the property, so that the amount claimed can be collected as taxes are collected.

(b) The Town of Sweetser may file a citation in any Grant County Court and seek costs.

(c) The Town of Sweetser may seek the recovery of costs plus attorney fees in the Grant County Courts.

CHAPTER G: Property Owner Right to Object to Complaint

Upon receipt of a "Notice to Abate", the property owner or their duly authorized representative may notify the Town Council of intent to object to any "Notice to Abate".

This Correspondence shall be in writing and shall specify the street address involved.

Any such correspondence must be received by the Town Council within the amount of time set out in the "Notice to Abate"

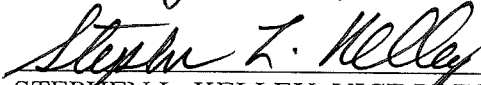
Upon receipt of such correspondence, the Town Council shall provide copies of same to the Town Attorney and to the office involved in the violation, who shall cause the objection to be investigated. No further action shall be pursued against the owner to abate the public nuisance and/or environmental public nuisance until resolution of the objection thereto.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF SWEETSER, INDIANA, this 26th day of July, 2012.

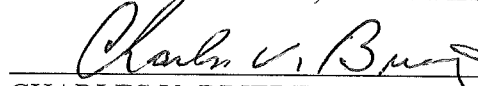
TOWN COUNCIL,
TOWN OF SWEETSER, INDIANA



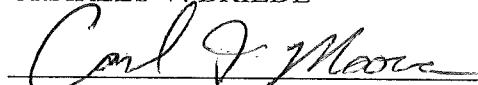
TRAVIS J. LEMASTER, PRESIDENT



STEPHEN L. KELLEY, VICE PRESIDENT



CHARLES V. BRIEDE




CARL D. MOORMAN



RICHARD P. GAMBLE

ATTEST:



EILEEN D. LEMASTER,
CLERK-TREASURER

This instrument was prepared by KIM A. ROGERS, ROGERS & ROGERS, P.C., 525 South Washington Street, Marion, IN 46953.