

STARKE COUNTY COMMISSIONERS
ORDINANCE 2020-002
ENVIRONMENTAL PUBLIC NUISANCES

WHEREAS, the Board of Commissioners of Starke County (the “Commissioners”) have determined that existing county ordinances, including the Unsafe Building Ordinance, do not adequately address Environmental Public Nuisances, and have determined that greater local government efforts to prevent, control and remediate Environmental Public Nuisances is needed and would benefit the health, safety, economic value to the citizens of Starke County; and,

WHEREAS, the Starke County Planning Commission has requested that the Commissioners take legislative action to facilitate administrative action to for the purposes to control or remediation of public nuisances; and,

WHEREAS, the Commissioners have caused to be performed an investigation of their authority into control and remediation of public nuisances, and have determined that statutory authority exists for administrative actions with respect to certain public nuisances, known as “environmental public nuisances”, and have determined that; and,

WHEREAS, the Commissioners have determined that implementation of administrative authority over Environmental Public Nuisances is lawful and feasible, and will benefit the health, safety and economic vitality of Starke; and,

THE BOARD OF COMMISSIONERS OF STARKE COUNTY, INDIANA HEREBY ORDAINS AND ENACTS the following Ordinance 2020-002, Environmental Public Nuisances, as follows:

Section 1. Definitions.

1.1 “Authorized Agent” means any employee, elected or appointed official, or contractor of the County designated by the Starke County Plan Commission, Starke County Sanitarian, or Starke County Health Dept. to make a nuisance inspection.

1.2 “County” means all of Starke County Indiana except for the portions within the corporate boundaries of the City of Knox, or the Towns of Hamlet or North Judson.

1.3 “*Environmental Public Nuisance*” means a condition or action that is harmful to the land, air, or water, or involves the standing of parking of vehicles, as set forth in Ind. Code § 36-1-6-9(c). The following are common examples of a Public Environmental Nuisance:

- a) Any accumulation of trash, junk, debris, building materials (new or used), chemicals, tires, inoperable vehicles or equipment; and,
- b) Any action or failure to take action contrary to state, federal or local laws and ordinances governing the standing or parking of vehicles.

1.4 “*Permitted Site*” means a site within the County possessing all necessary valid state and local permits for conducting an activity or harboring a condition at the location, even if the activity or condition might otherwise constitute an Environmental Public Nuisance.

1.5 “*Inspector*” means an Authorized Agent of a County subdivision, board or other County entity designated by the Commissioners as having authority to issue County ordinance violation citations for the purpose of enforcing this Ordinance.

1.6 “*Owner*” means the owner of the fee simple of a parcel or real property, and includes a life tenant or tenants, and the owner or owners of record according to the records in the Office of the Starke County Auditor.

1.7 “*Private Property*” means all real property located within the County, except for property owned a governmental unit or entity.

Section 2. Environmental Public Nuisances Prohibited; Responsibility.

Causing or allowing an Environmental Public Nuisance on private property is prohibited. All persons owning Private Property in the County bear responsibility for keeping their property free from any Public Environmental Nuisance.

Section 3. Statutory Authority and Limitations.

3.1 *In General.* Authority for this Ordinance is based on the following Indiana statutes, and it is expressly intended that the terms hereof should be interpreted liberally therewith:

3.2 *Environmental Public Nuisance Statutes.* This is an Ordinance applicable when a condition violating an ordinance of a municipal corporation exists on real property, and hereby incorporates by reference the provisions of I.C. § 36-1-6-2, and related statutes.

3.3 *Enforcement by Administrative Proceedings.* The Commissioners intend that this Ordinance shall constitute adoption of an ordinance providing for enforcement through an administrative proceeding before an administrative body pursuant to I.C. § 36-1-6-9 by restricting or prohibiting actions harmful to the land, air, or water, or governing the standing or parking of vehicles, and hereby incorporates by reference the provision of I.C. § 36-1-6-9, and related statutes.

3.4 *Limitations on Enforcement by Administrative Proceedings.* The Commissioners intend that this Ordinance shall comply with I.C. § 36-1-3-8, and that therefore administrative authority to enforce this ordinance is limited to a penalty of a fine of no more than two thousand five hundred dollars (\$2,500.00) for a first violation of the ordinance, and no more than seven thousand five hundred dollars (\$7,500.00) for a second or subsequent violation of the ordinance.

Section 4. Procedure.

4.1 *Complaints.* Violations under this ordinance shall be cited by any department in the county which receives a complaint regarding an Environmental Public Nuisance on any property in the County, and they shall forward that complaint to the Starke County Building Commissioner or such other officer as shall be designated by the Starke County Plan Commission, hereinafter referred to as the Enforcement Officer.

4.2 *Assignment of Complaints.* The Enforcement Officer shall promptly investigate the complaint. If the Enforcement Officer determines that:

- a. The complaint is true and made in good faith; and,
- b. The condition or activity described in the Complaint constitutes an Environmental Public Nuisance as defined in this Ordinance; and,
- c. Is located on Private Property located in the County,

the Enforcement Officer shall open a file for the Complaint and thereafter process the complaint and shall follow the case through to its resolution, generally commencing with a Notice to Abate as described in Section 4.3, below.

4.3 *Notice to Abate.* When a complaint is found valid as described in section 4.2 above, the Enforcement Officer shall cause written Notice to Abate to be served upon the owner of the property, granting the owner a minimum of ten (10) calendar days in which to remedy the nuisance.

The Notice to Abate shall be served by the Enforcement Officer, a police officer or authorized employee by personal service to the owner or by certified mail to the owner. The Notice to Abate shall contain the following information.

- a. The address of the property in violation.
- b. The date of the Notice to Abate.
- c. The name of the Enforcement Officer, police officer or authorized employee posting the notice.
- d. The address, telephone number and email address of the issuing Starke County Department.
- e. A warning that if the Environmental Public Nuisance is not remedied within a specified number of calendar days after the notification, the County of Starke will abate the nuisance and seek recovery of the actual costs involved in abating and remedying the nuisance.

A failure to give such written notice or a defect in the content of the notice shall not constitute a defense to any action to enforce the provisions of Section 5.

In the event personal service or service by certified mail fails, service may be by publication in a newspaper of general circulation in the County on two (2) consecutive occasions.

4.4 Post-Notice Inspection; Determination of Compliance. Following the expiration of the abatement remedy time period set forth in the Notice to Abate, the Enforcement Officer shall personally inspect the property and determine whether the nuisance has been adequately abated.

If the Enforcement Officer finds that the nuisance has been adequately abated, the Enforcement Officer shall provide written notice to the property owner that no additional action is required. The Enforcement Officer may include a statement that re-occurrence of the nuisance conditions will prompt future action.

If the Enforcement Officer finds that the nuisance has not been adequately abated, but that substantial progress has been made, the Enforcement Officer may send an additional Notice seeking additional cooperation from the property owner.

If the Enforcement Officer determines that the property owner is unlikely to fully abate the nuisance on a cooperative basis the Enforcement Officer shall commence an enforcement action in accordance with the terms of Section 5 of this Ordinance.

Section 5. Enforcement.

5.1 Duty of the Enforcement Officer. The Enforcement Officer (or any other person designated by the Planning Commission), shall manage code enforcement with respect to Environmental Public Nuisances.

5.2 Citation for Violation. If the Enforcement Officer determines that an Environmental Public Nuisance exists on private property in the County, and has not been abated as directed by written Notice to Abate as provided in Section 4, above, the Enforcement Officer may cause a citation for violation the Ordinance to be issued to the offending property owner by personal service of the Sheriff's Department of Starke County.

5.3 Abatement by the County on Private Property. In addition to the issuance of a citation for violation of this Ordinance, the Enforcement Officer, on behalf of and in the name of Starke County, may issue a request for the County to abate the Environmental Public Nuisance, and shall thereafter furnish the Auditor with a statement of the actual cost incurred by the abatement of the nuisance. The actual abatement may be assigned to a County department or contracted out through standard procedures.

5.4 Responsibility of Property Owner for Costs of Enforcement. The Starke County Enforcement Officer shall make a statement of the actual cost of remedying the nuisance. The cost shall include: the costs of remedying the nuisance, administrative fees equal to no more than the greater of \$50.00 or 25% of the cost, and all reasonable costs of collection. Said statement shall be delivered to the property owner by first class mail. The owner shall pay the amount so billed within thirty (30) days after receipt, which moneys shall be deposited in the General Fund.

5.5 Fines. In addition, the Enforcement Officer may levy a fine or fines, provided that the total fine and costs shall not to exceed the authority set forth in Section 3.3 above.

5.6 Collection. If the owner fails to pay the fine and costs in full within thirty (30) days after received the written statement, a copy of all costs shall be filed with the Office of the Auditor of Starke County for the purpose of placing the amount claimed on the tax duplicate

against the property so that the fine and costs can be collected as taxes are collected, subject to the limitations above, and to the owner's right to object.

Section 6. Property Owner or Occupant's Right to Object.

6.1 Notice of Objection. Upon receipt of a Notice to Abate, the property owner or occupant served, or his duly authorized representative may notify the issuing County Department of an intent to object to the Notice to Abate. The objection shall be in writing and shall specify the address of the property involved, and provide a simple, plain language explanation of the basis for the objection. A Notice of Objection must be served upon the County within ten (10) day of receipt of the Notice to Abate.

6.2 Investigation of Objections. Upon receipt of an objection, the issuing County Department shall provide copies to the Enforcement Officer, who shall investigate the basis for the objection. No further action shall be pursued against the owner to abate the Environmental Public Nuisance until investigation of the objection has been completed.

6.3 Ruling on Objections; Owner Right to Appeal to Plan Commission. If the Enforcement Officer finds the objection is well founded, the Enforcement Officer shall terminate the enforcement action and give written notice of the decision to the objecting owner or occupant. If the Enforcement Officer finds the objection is not well founded, the Enforcement Officer shall notify the owner or occupant (a) that the enforcement action will continue, and (b) that the owner or occupant has the right to appeal the decision by a petition for appeal before the Starke County Plan Commission.

6.4 Appeals to Plan Commission. To commence an appeal, an objecting owner or occupant must file a written petition for appeal of the Enforcement Officer's decision to the Plan Commission within thirty (30) days of receipt of notice of the Enforcement Officer's decision denying the owner or occupant's objections and continuing the enforcement action. The owner or occupant's appeal shall be limited to the issues raised in their petition for appeal. The appeal shall be heard by the Plan Commission at a public hearing. The Enforcement Officer shall present his or her case in support of the enforcement action, and may be represented by an attorney. The owner or occupant shall present his or her case opposing the enforcement action, and may be represented by an attorney. The Enforcement Officer bears the burden of proof by a preponderance of the evidence that the proposed enforcement action is proper, lawful and

supported by the evidence. The Plan Commission shall rule on the petition with ten (10) days, and issue written findings of fact.

6.5 *Judicial Review.* If the Plan Commission finds in favor of the owner or occupant, the enforcement action is terminated. If the Plan Commission finds in favor of the Enforcement Officer and that the enforcement action should continue, the owner or occupant has the right to judicial review; however, the enforcement action may continue unless a court of competent jurisdiction timely orders a stay, temporary restraining order, or other order halting enforcement.

Section 7 Effect, Severability.

7.1 *Severability.* If any provision or term of this Ordinance, or any application thereof is held invalid by a Court of competent jurisdiction, the invalidity shall not affect other applications of the provisions or terms which can reasonably be given effect without the invalid provision or term or the application thereof.

7.2 *Severability.* This Ordinance is not intended to, and shall not be construed to repeal any former ordinance as to any offense committed against such former ordinance, or as to any act done, any penalty, forfeiture, or punishment so incurred or any right accrued or claim arising under the former ordinance. This Ordinance is supplementary to, and not intended to revoke or amend Starke County Unsafe Building Ordinance and it Open Burning Ordinance.

7.3 *Effective Date.* This Ordinance shall be in full force and effect from after its passage by the Board of Commissioner of Starke County, and subsequent publication thereof.

Presented to the Board of Commissioners of Starke County, Indiana, and approved on

the 6 day of January, 2020 by the following vote:

COMMISSIONERS OF STARKE COUNTY

VOTE

yes



Charles Chesak, President

yes



Kathryn Norem, Vice-President

yes



Bryan Cavender, Secretary

ATTEST:



Rachel Osterreich, Auditor
Of Starke County Indiana