



DocId:8021238

Tx:4018399

**STARKE COUNTY PLANNING COMMISSION  
53 EAST MOUND STREET  
KNOX, IN. 46534  
574-772-9133**

**2023000505**  
MANDY THOMASON, RECORDER  
STARKE COUNTY, KNOX, IN  
RECORDED AS PRESENTED  
02/27/2023 01:54 PM

The Code of the County of Starke, Indiana dated 1991, is amending the Starke County Commissioners Ordinance 2020-002 for Environmental Public Nuisances for approval by the Starke County Commissioners.

Starke County Planning Commission public hearing held on: February 8, 2023.

Recommended and approved by the Starke County Plan Commission on: February 8, 2023.

Presented to the Starke County Commissioners on: February 20, 2023

Approved by the Starke County Commissioners on: February 20, 2023

Dated: February 20, 2023

Charles Chesak President

Mark Gourley Vice-President

Donald Binkley

Rachel Oesterreich, Auditor

## Amendment of the Starke County Commissioner's

Ordinance of 2023- 002A

### Environmental Public Nuisances

Whereas, The Board of Commissioners of Starke County (the "Commissioners") have determined that the existing county ordinance of the, Environmental Public Nuisances, have determined that greater local government efforts to prevent, control and remediate, Environmental Public Nuisances as 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 for the purposes to control or remediate the 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 the 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 2023-\_\_\_\_\_, Environmental Public nuisances, as follows;

#### Section 1: Definitions

- 1) "**Authorized Agent**" means any employee, elected or appointed official, or contractor of the county designated by the "Starke County Planning Commission."
- 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.
- 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), inoperable vehicles, dilapidated recreational vehicles (ex: boats, jet ski's).
  - b) Any action or failure to take action contrary to state, federal or local laws and ordinances governing the standing or parking of vehicles.
- 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 and Environmental Public Nuisance.

- 5) **"Code Enforcement Officer"** means the County Building Inspector, and any other authorized agent of any County board, subdivision, or entity with the statutory authority or as otherwise authorized by the County Commissioners or County Planning Commission as having the authority to issue County ordinance violations, citations, or infractions, for the purpose of enforcing this Ordinance." This would be more inclusive and expand who we classify as a code enforcement officer.
- 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.
- 7) **"Private Property"** means all real property located within the county, except for property owned by 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 of Starke bear responsibility for keeping their property free from any Public Environmental Nuisance.

Section 3: **Statutory Authority and Limitations**

- 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;
- 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) **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.
- 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 infraction of the ordinance resulting in a Written Notice and an additional two thousand five hundred dollars for a total of no more than five thousand dollars (\$5,000.00) for a Notice of Abatement, second or subsequent infraction of the ordinance once the case has been closed per the planning commission board or Code Enforcement Officer will result in the procedure starting over.

Section 4: Procedure

- 1) **Complaints.** Violations or Infractions under this ordinance can be identified or reported 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 Planning Commission or such other officer as shall be designated by the Starke County Plan Commission, hereinafter referred to as the Code Enforcement Officer.
- 2) **Assignment of Complaints.** The Code Enforcement Officer shall promptly investigate the complaint. If the Code 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 Code Enforcement Officer shall open a case for the Complaint and thereafter process the complaint and shall follow the case through to its resolution, generally commencing with an Infraction, as described in Section 4-(3). below.
- 3) **Infraction.** At which time a complaint as been determined to be valid by the Code Enforcement Officer, they will issue an infraction notification at the property in the form of a door knob tag. On such door knob tag it shall state the following:
  - a) the fees and fines associated with the Infraction notice and,
  - b) the time frame of forty-eight (48) hours or two (2) business days that the owner or tenant should contact the Code Enforcement Officer and have a plan of action to resolve the infraction and,
  - c) the fine of three hundred and fifty dollars (\$350.00) and the information that the fine may be waived or reduced per the discretion of the Code Enforcement Officer and,
  - d) the Code Enforcement officers office contact information in the Planning Commission office.

At which time the owner or tenant has made contact with the Code Enforcement Officer, the owner or tenant shall be given ten (10) calendar days to clean up the nuisance on the property. The Code Enforcement Officer may allow leniency with the time frame as long as progress is being made, and this is at the discretion of the Code Enforcement Officer.

- 4) **Written Notice.** When an infraction has not been addressed by the owner or tenant of the private property where the nuisance has been found valid within ten (10) calendar days then the Code Enforcement Officer shall issue a Written Notice. The Written Notice shall be served upon the owner of the property through US Certified Mail, granting the owner a minimum of ten (10) calendar days in which to make contact with the Code Enforcement Officer and remedy the nuisance. The Code Enforcement Officer may allow leniency with the time frame as long as progress is being made, and this is at the discretion of the Code Enforcement Officer. The Written Notice shall contain the following information
  - a) The Address of the property in violation and,

- b) the date of the Written Notice and,
  - c) the Code Enforcement officer's office contact information in the Planning Commission office and,
  - d) The address, telephone number and email address of the issuing Starke County Department and,
  - e) A warning that if the Environmental Public Nuisance is not remedied within ten (10) calendar days after the notification, the County of Starke will abate the nuisance and seek recovery of the actual cost involved in abating and remedying the nuisance and,
  - f) the administrative fee of three hundred and fifty dollars (\$350.00) that is non waivable and a fine of two thousand five hundred dollars (\$2500.00) and the information that the administrative fee may not be waived or reduced and that the fine may be reduced but not waived per the discretion of the Code Enforcement Officer and,
  - g) the Case number.
- 5) **Notice to Abate.** When Written Notice has not been addressed by the owner or tenant of the private property where the nuisance has been found valid within ten (10) calendar days, then the Planning Commission Legal Counsel shall issue a Notice to Abate. The Notice to Abate shall be served upon the owner or tenant of the property by the Code Enforcement Officer, Sheriff or Police Officer, or authorized employee by personal service or by certified mail to the owner, granting the owner a minimum of ten (10) calendar days in which to make contact with the Code Enforcement Officer and remedy the nuisance. The Notice to Abate shall contain the following information
- a) The Address of the property in violation and,
  - b) the date of the Notice to Abate and,
  - c) the name of the Code Enforcement Officer, sheriff or police officer, or authorized employee posting the notice and,
  - d) The address, telephone number and email address of the issuing Starke County Department.
  - e) the additional administrative fee of three hundred and fifty dollars (\$350.00) for a total of seven hundred dollars (\$700.00) in administrative fees, and a fine of an additional two thousand five hundred dollars for a total of five thousand dollars (\$5,000.00) and information that the administrative fees and fines may not be waived or reduced at this point.
  - f) A warning that if the Environmental Public Nuisance is not remedied within ten (10) calendar days after the notification, the County of Starke will abate the nuisance and seek recovery of the actual cost involved in abating and remedying the nuisance.
  - g) Case number.
- 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.

- 6) **Public Hearing.** When Infraction, Written Notice, and Notice to Abate has not been addressed by the owner or tenant of the private property where the nuisance has been found valid within thirty (30) calendar days, then the Code Enforcement Officer shall refer the case to the Planning Commission Administrator to prepare it for a public hearing with the Planning Commission Board.
- 7) **Post- Notice Inspection; Determination of Compliance.** Following the expiration of the Infraction, Written Notice or Notice to Abate 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 Code Enforcement Officer finds that the nuisance has been adequately abated, the Enforcement Officer shall provide written or verbal notice to the property owner that no additional action is required. The Code Enforcement Officer may include a statement that re-occurrences of the nuisance conditions will prompt future action and that any reoccurring violation within a thirty (30) calendar day time frame of abatement will automatically receive administrative fees and fines. The Code Enforcement Officer is not obligated to offer leniency on re-occurrences of nuisances.

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

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

#### Section 5 **Enforcement.**

- 1) **Duty of Code Enforcement Officer.** The Code Enforcement Officer (or any other person designated by the Planning Commission), shall manage code enforcement with respect to Environmental Public Nuisances.
- 2) **Citation for Infraction.** If the Code Enforcement Officer determines that an Environmental Public Nuisance exists on private property in the County, a door tag as provided in Section 4-3), the Code Enforcement Officer may issue a citation for the infraction of the Ordinance to be issued to the offending property owner.
- 3) **Written Notice** If the Code Enforcement Officer determines that the time frame has lapsed for the door tag as stated in Section 4-(3), then the Code Enforcement Officer in addition to

the issuance of the citation for the infraction of this Ordinance may issue a Written Notice with fee's and fines.

- 4) **Abatement by the County on Private Property.** In addition to the issuance of the citation and Written Notice for the infraction of this Ordinance, the Code Enforcement Officer, on behalf of and in the name of Starke County, may take the matter to legal counsel to issue an abatement notice after the time frame stated in Section 4-(4).
- 5) **Public Hearing.** In addition to the issuance of the citation, Written Notice, and Notice for Abatement for the infraction of this Ordinance, the Code Enforcement Officer, on behalf of and in the name of Starke County, may take the matter to a public hearing after the time frame stated in Section 4-(5). At the public hearing, the Code Enforcement Officer may request 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 if so, determined by the Planning Commission to abate the property.
- 6) **Responsibility of Property Owner for Cost of Enforcement.** The Starke County Code Enforcement Officer shall make a statement of the actual cost of remedying the nuisance. The cost shall include the cost of remedying the nuisance, administrative fees no more than seven hundred dollars (\$700.00). Said statement shall be delivered to the property owner by US certified mail. The owner shall pay the amount so billed within (30) days after receipt, which moneys shall be deposited twenty-five percent (25%) into the Unsafe Building fund, twenty-five percent (25%) into the Public Nuisance Abatement fund, and fifty percent (50%) into the County General Fund.
- 7) **Fines.** In addition, the Code Enforcement Officer may levy a fine or fines, provided that the total fine and costs shall not exceed the authority set forth in Section 3-(3 thru 4) above.
- 8) **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 the 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.**

- 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) days of receipt of the Notice to Abate.
- 2) **Investigation of Objections.** Upon receipt of an objection, the issuing County Department shall provide copies to the Code 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.

- 3) ***Ruling on Objections; Owner Right to Appeal to Planning Commission.*** If the Code Enforcement Officer finds the objection is well founded, the Code Enforcement Officer shall terminate the enforcement action and give written notice of the decision to the objecting owner or occupant. If the Code Enforcement Officer finds the objection is not well founded, the Code 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 Planning Commission.
- 4) ***Appeals to the Planning Commission.*** To commence an appeal, an objecting owner or occupant must file a written petition for appeal of the Code Enforcement Officer's decision to the Planning Commission within thirty (30) days of receipt of notice of the Code Enforcement Officer's decision denying the owner or occupant's objections and continuing the enforcement action. The owner or occupants appeal shall be limited to the issues raised in their petition for appeal. The appeal shall be heard by the Planning Commission at a public hearing. The Code 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 Code 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 Planning Commission shall rule on the petition with ten (10) days, and issue written findings of fact.
- 5) ***Judicial Review.*** If the Planning Commission finds in favor of the owner or occupant, the enforcement action is terminated. If the Planning Commission finds in favor of the Code 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.***

- 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 reasonable be given effect without the invalid provision or term or the application thereof.
- 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, and 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's Open Burning Ordinance.
- 3) ***Effective Date.*** This Ordinance shall be in full force and effect from after it's passage by the Board of Commissioners of Starke County, and subsequent publication thereof.



Presented to the Planning Commission Board of Starke County, Indiana, and approved on the 8<sup>th</sup> day of February, 2023 by the following vote: 8-0.

Presented to the Board of Commissioners of Starke County, Indiana, and approved on the 20<sup>th</sup> day of February, 2023 by the following vote:

**COMMISSIONERS OF STARKE COUNTY**

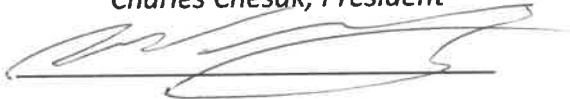
VOTE

yes



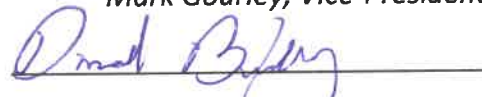
*Charles Chesak, President*

yes



*Mark Gourley, Vice-President*

yes



*Donald Binkley, Member*