

Ordinance 2015-11

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF LOGANSPORT, INDIANA, TO
AMEND A PORTION OF ORDINANCE 2013-16
(Ordinance declaring weeds to be a nuisance and providing for the removal of said weeds and paying costs of such removal.)

WHEREAS, Item (A) and (B) Content of Notice to Owner under Article III of Ordinance 2013-16 shall be replaced with the following language:

WHEREAS, it is in the best interest of the citizens of the City of Logansport, Indiana ia that property owners keep and maintain their property in a safe and health) manner: and

WHEREAS, it is in the best interest of the citizens of Logansport that the City of Logansport prevents weeds from growing on property owner's property in a height exceeding eight (8) inches.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Logansport, Indiana that:

Article I. Definition

For the purposes of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

"Department" refers to the Community Development Department- which shall have the responsibility of administering this article.

"Enforcement authority" refers to the chief administrative officer of the department authorized to enforce the removal of weeds and rank vegetation, or his or her designee.

"Habitually unmaintained property" refers to a parcel of land that the department has removed weeds or rank vegetation from *three* or more times in the twelve month period from January 1 to December 1 of the preceding year.

"Hearing authority" shall mean the Logansport Board of Public Works and Safety.

"Owner" refers to the owner of record. as found in the records of the Cass County Auditor's office.

"Owner's address" refers to the most recently known or public records mailing address of the owner and being that address to which the County Treasurer sends tax duplicates.

"Person responsible" shall mean tenant or occupant of the premises who has in writing agreed to be responsible for cutting the weeds or removal of the rank vegetation .

"Rank vegetation" refers to any plant growth, which is or may be harmful to the senses. health or Well-being of citizens of the jurisdiction.

"Weeds" refers to any growth of vegetation. other than trees, bushes, shrubs, ornamental plants, or agricultural plants cultivated in an orderly manner for the purpose of producing food. Notwithstanding the foregoing, trees, bushes, shrubs or agricultural plants, which have sprouted as volunteers and are growing along fence lines and public rights-of-way, shall be considered to be weeds.

"Weeds" and "rank vegetation" do not include prairie land or agricultural crops such as hay and pasture.

Article II. Prohibitions

A) No owner of real property shall allow any growth of grass or weeds in excess of eight (8) inches in height upon his property.

B) No owner of real property shall allow the growth of rank vegetation upon his property.

C) When a complaint alleging a violation of this chapter is received by the department from any person, or through its own employees, it is determined that an inspector needs to enter the property to complete an inspection, the department shall seek approval, through an administrative search warrant (see IC 36-7-9-16) or other court order, from a court of law to enter onto any occupied property and make an inspection if the owner or other person in control of the property does not voluntarily give permission to enter the property to make the inspection. The search shall be limited to the places pertinent to the complaint or as outlined in the inspection warrant. No such administrative search warrant or other court approval shall be necessary if the inspection can be made from a public sidewalk, street alley or other public place or from adjoining property with that owner's permission, or if the premises is abandoned.

Article III. Notice of violation.

(A) The department shall document any violation of this municipal code and issue a notice to the owner to cut the weeds or cut or remove the rank vegetation within seven (7) calendar days. The department shall give a maximum of two (2) notices for separate violations of Article II on a single property during any calendar year. If a violation occurs after the second offense, the department shall cause the violation to be abated and take whatever steps may be reasonable and necessary to recover the costs of said abatements from the owner(s) of the offending property. A notice becomes final seven (7) days after notice is given, unless the owner or another person holding a substantial property interest of public record requests a hearing, in writing, before the hearing authority and the written request is delivered to the department before the end of the seven (7) day period. If a hearing is held, the owner or other interested party may appeal the decision of the hearing authority as outlined in IC-36-7-9-8, and as amended from time to time, to the Circuit or Superior Court of Cass County within the time limits provided in the statute. If this matter is taken to a court, the City may recover its costs and expenses, a fine, as well as all amounts allowed by law and this municipal code.

(B) Content of Notice to Owner. For any property found to be in violation of Article II the department shall issue a notice to remove weeds and/or rank vegetation to the owner. The notice shall advise the owner of the property of the violation and advise them they have seven (7) days to abate the violation. The notice must also state the amount of penalty included if the violation is not abated within the seven (7) days. Further, the notice must also state that the owner of an offending property will receive a maximum of two (2) notices per property for violations of Article II during any calendar year and that the department will take care of the nuisance at the owner's expense without further notice to the owner. If the violation is corrected by the owner or other responsible party within seven (7) days, no further action will be taken and no penalty imposed. The owner or other responsible party shall correct the violation or request a hearing before the hearing authority within seven (7) days of the date of service. The request for a hearing must be in writing, addressed to the department and delivered in person or by certified mail. The notice must also state that if the violation is abated by the department or its agent, the owner will be liable for the cost incurred by the department in abating the violation, the average processing cost incurred by the department in processing

the matter, and any monetary penalty as outlined under Article IV for property owners who violate Article II.

(C) Manner of Service. The notice to remove weeds and/or rank vegetation shall be in writing and shall be served on the owner of the property in at least two of the following manners: delivery in person, by first class mail, and/or by placement of the notice to remove weeds and/or rank vegetation in a conspicuous place on the property where a violation occurs. As outlined in IC 36-7-70.1-3, the notice shall also state:

- (1) The location of the violation:
- (2) The nature of the violation:
- (3) The time period for correcting the violation:
- (4) The remedy that the department may seek for the violation.

Any notices to be given hereunder by first class mail shall be deemed sufficiently given when placed in an envelope directed to the owner at the owner's address and deposited in a United States Post Office mailbox postage prepaid.

(D) Emergency Action . No section of this code shall prevent the department from executing emergency action as set forth in IC 36-7-9-9.

- (1) In the event that the Community Development Director determines the weeds and/or rank vegetation are a danger to public health, he/she may order an emergency abatement of the violation.
- (2) Documentation must be made and Photos taken of the public threat and presented to the Board of Works at their next regularly scheduled meeting.
- (3) Abatement of any additional violations that are not a threat to public health and safety shall be handled as outline in this ordinance.

Article IV. Removal of weeds and/or rank vegetation by the department.

If the violation has not been abated by the owner as noticed, the department shall enter the property and abate the violation utilizing its own employees and equipment or a contractor engaged by the department.

Article V. Liability for costs incurred in abating the violation.

(A) When a violation of Article II is abated by action of the department or its contractor, the owner/s) of record at the time the notice to remove weeds and/or rank vegetation was served is jointly and severally liable for the following costs in abating the violation:

- (1) The actual cost of the work performed by the department or the price of work accomplished by a contractor.
- (2) An amount that represents a reasonable forecast of the average processing expense that will be incurred by the department in taking the technical, administrative and legal actions concerning typical weed and/or rank vegetation violations that are necessary for work to be performed by the department or by a contractor. In calculating the amount of the average processing expense, the following costs may be considered.
 - (a) The cost of obtaining reliable information about identity and location of the owner of the property.
 - (b) The cost of preparing and mailing notices.
 - (c) The salaries and fringe benefits of employees.
 - (d) The prorated cost of motor vehicle operating costs for department owned vehicles or the cost of mileage for the use of employees' private vehicles.
 - (e) The cost of supplies, equipment and office space.

Article VI. Bill for costs incurred in abating the violation.

(A) The department shall issue a bill to the owner of the real property for the costs incurred by the department in bringing the property into compliance with this chapter, including administrative costs, monetary penalty, and abatement costs. The person to whom the bill is issued may appeal that determination to the hearing authority within 10 days of receiving the bill. The only bases for appeal which the hearing authority may consider are:

(1) The work was not performed on the noticed property or was performed before the seven (7) days' notice required by Article III.

(2) The amount of charges is unreasonable based on the size of the property; or

(3) The owner was not served legal notice of the violation.

The hearing authority shall consider such appeals and may adjust or waive said costs as individual circumstances may warrant. The decision of the hearing authority may be appealed to the Circuit or Superior Court of Cass County according to law.

(B) If the owner of the real property fails to pay such bill as issued or appeal it as provided herein, the department or the office of the clerk treasurer shall, after 30 days, certify to the County Auditor the amount of the bill, plus any additional administrative costs incurred in the certification. The Auditor shall place the total amount certified on the tax duplicate for the property affected, and the total amount, including any accrued interest, shall be collected as delinquent taxes are collected and shall be disbursed to the municipal fund from which such costs were made.

Article VII. Statutory authority

(A) Authority of City to adopt procedures for the removal of weeds and/or rank vegetation, see IC 36-7-9-1 et seq. and 36-7-10.1.

(B) For purposes of this chapter and IC 36-7-9-4 and 36-7-10.1-1 et seq., the City now finds that a violation of Article II constitutes an unsafe premise by being a fire hazard, and/or a hazard to the public health, and/or a public nuisance, and/or a danger to a person or property.

Article VIII. Violations and penalty

(A) Violations. It shall be a violation of this article for any person to allow his property to be in a condition which is prohibited by Article II.

(B) Penalty

(1) Any person who violates any provision of this chapter shall be subject to a civil penalty of \$50.00 for the first violation in any calendar year, with the second violation during any calendar year carrying a civil penalty of \$100.00 and the third and subsequent violations during any calendar year carrying a penalty of \$250.00.

(2) A court of law may assess additional civil penalties of up to \$5,000 against the owner for noncompliance.

(C) If a judgment is entered against a defendant in any action to enforce this chapter, the defendant may perform community restitution or service (as defined in IC 35-41-1-4.6) instead of paying the monetary judgment for the ordinance violation if:

(1) The defendant and the attorney for the City agree to the defendant's performance of community restitution or service instead of payment of a monetary judgment;

WHEREAS, the City of Logansport wants property owners to continue keeping and maintaining their property in a safe and healthy manner, and,

WHEREAS, Certain changes are being made to Ordinance 2013-16 regarding violations and notices to the owner.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF LOGANSPOORT, INDIANA, AS FOLLOWS:

INTRODUCED, FILED AND APPROVED by a vote of 7 in favor and 0 opposed on this 12th day of Mar, 2015.

DULY PASSED, ORDAINED AND ADOPTED THIS 6th day of Apr, 2015, by the Common Council of the City of Logansport, Cass County, Indiana, on a vote of 7 to 0.

COMMON COUNCIL OF THE CITY OF LOGANSPOORT, IN

By: Joseph E. Buck

Joe Buck, President

ATTEST:

Carol Sue Hayworth

Carol Sue Hayworth, Logansport/City Clerk/Treasuer

Submitted to, approved by, and signed by me, the Mayor of Logansport, Indiana, this 6th day of Apr, 2015.

Ted Franklin

Ted Franklin, Mayor