**CITY OF WOODBURN**

**ORDINANCE \_\_G-16-1338\_\_\_\_\_**

**AN ORDINANCE AMENDING ORDINANCE \_\_\_G-13-1305\_\_\_\_ AND**

**ESTABLISHING PROCEDURES FOR THE ABATEMENT AND REMOVAL OF PUBLIC NUISANCES AND NOISE CONTROL**

WHEREAS, in the City of Woodburn, Indiana (the “**City**”) public nuisances are, or may in the future be, detrimental to the public health, safety, welfare and comfort of the citizens of the City; 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, excessive noise is detrimental to the enjoyment of private property in the City and reasonable controls thereon will further the same policies as those controls on other public nuisances;

WHEREAS, adequate protection of the public health, safety, welfare and comfort requires that public nuisances be regulated, prohibited and abated, and

WHEREAS, the Common Council (the "**Council**") of the City 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 City and previously adopted Ordinance No. \_\_\_G-13-1305\_\_\_\_; and

WHEREAS, the Council hereby amends Ordinance \_\_G-13-1305\_\_ and restates the applicable provisions of the Ordinance, in its entirety, for the convenience of the citizens of the City and to assist with enforcement.

**NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF WOODBURN, INDIANA THAT THE FOLLOWING ORDINANCE BE ENACTED:**

**SECTION I – DEFINITIONS**

The following definitions are applicable to this Ordinance:

A. Department: The Woodburn Police Department which shall have all powers reasonable and necessary for the performance of its responsibilities under this Ordinance.

B. Motor Vehicle: Any vehicle powered by a mechanical engine, and designed to be driven or used on any public or private property. Such definition shall include, but not be limited to: automobiles, vans, trucks, motorcycles, motor scooters, dune buggies, snowmobiles, all-terrain vehicles, go-carts, mini bikes and trail bikes.

C. Junk Vehicles: Any Motor Vehicle or non-motor vehicle that is either disassembled, non-operative, wrecked and 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.

D. Abandoned Vehicles: Abandoned Vehicles have that definition set forth under Indiana Code § 9-22-1 *et seq.*

E. Public Nuisances: Public Nuisances are defined in accordance with Indiana Code § 36-8-2-4 as the use or possession of property that might endanger the public health, safety or welfare of the City and may include, but shall not be limited to, the following:

1. Litter;

2. Weeds or rank vegetation which shall mean grass and weeds over nine (9) 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 and un- remedied for a reasonable period of time;

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 – NUISANCES PROHIBITED**

A. No owner or occupant of any lot, place, or area within the City, the agent of any owner, or a tenant or contract purchaser, shall permit any Public Nuisance on such lot, place or area within the City. The owner and occupant may be held jointly liable for the condition of the property.

B. The Council hereby specifically adopts the provisions of IC 36-7-10.1-1 through 36-7-10.1-5, and any amendments thereto.

**SECTION III – NOTICE TO ABATE CERTAIN PUBLIC NUISANCES**

A. Except as may be provided in Sections VI, VII & VIII, in the event any property owner, tenant, or contract purchaser resides at, occupies or owns a place containing a Public Nuisance, the Mayor, the Clerk-Treasurer, a City of Woodburn Police Officer or other person designated by the Mayor, shall notify, in writing, the owner or occupant of any such lot, place, or area within the City, or the agent of the owner, to cut, destroy, or remove any such weeds or rank vegetation, deleterious unhealthful growths, or otherwise abate any other Public Nuisance that may be growing, lying, or located on the owner's property or on the sidewalk abutting these areas. Notice shall be sent by certified mail, return receipt requested, addressed to the owner, occupant, or agent of the owner, at the last known address of the owner as shown by the records of the Allen County Auditor. Notice may also be posted in the yard or be personally served by an official of the City. If the notice is personally served, the person serving the notice shall prepare and file with the city a return of service showing the date notice was served, who it was served on, and signed by the person who served the notice. In the event the owner or occupant of the real estate shall refuse to accept the certified mail sent by the City, notice shall be given as provided in Rule 4.1 of the Indiana Trial Rules.

B. The notice of a Public Nuisance violation in accordance with the above Section III(A) shall: (1) state the name of the property owner, tenant, or contract purchaser; (2) state the address of the property subject to the violation; (3) state the particular facts giving rise to the violation of this Ordinance; (4) state the action required to cure the violation; and (5) state that the person has ten (10) days to cure the violation.

**SECTION IV – ACTION ON NONCOMPLIANCE**

A. Except as may be provided in Sections VI, VII & VIII, on the failure, neglect, or refusal of any owner, tenant or contract purchaser so notified to cut, destroy, or remove weeds, grass or other deleterious unhealthful growths, other noxious matters or Public Nuisances growing, lying or located on such property or on the sidewalk abutting these areas within ten (10) days after the giving of notice to the property owner or occupant as provided herein, the City may proceed to enforce the provisions of this Ordinance and carry out such actions necessary to cure the Public Nuisance.

B. In the event City employees are used to enforce this chapter, the hourly rate shall be One Hundred Dollars ($100) per hour per employee for the first violation and said rate shall increase by Fifty Dollars ($50) per hour per employee for subsequent violations. In addition to the hourly rate, all costs involved with the disposal of any material removed from the property shall be assessed to the property owner. This hourly rate may be adjusted from time to time by the Council by resolution in order to be assured that the costs of such cutting, removal or destroying are completely paid for by the landowner, and not the taxpayer.

**SECTION V – COLLECTION OF COSTS BY LIEN OR COURT**

A. When the City has effected the removal of the Public Nuisance in accordance with Section IV, and has not been paid the actual costs thereof, the Clerk-Treasurer may make a certified statement of the actual cost incurred by the City in the removal using the rates contained in Section IV(B) as well as any administrative costs associated therewith. The statement must be delivered to the owner of the property by a law enforcement officer of the City or by certified mail, return receipt requested, and the owner shall pay the amount to the Clerk-Treasurer. If the landowner fails to pay the amount within ten (10) days after receiving the statement, a certified copy of the statement of costs shall be filed in the office of the Auditor of Allen County. The Auditor shall place the amount claimed on the tax duplicate against the property affected by the work, and the amount shall be collected as taxes are collected and shall be disbursed to the general fund of the City, all as provided by IC 36-7-10.1-1 through 36-7-10.1-5.

B. In lieu of filing a lien as set out in Section V(A) above, if the owner or occupant of the property fails to make payment of the costs incurred by the City in effecting removal of the Public Nuisance within the timeframe described under Section V(A), the City may bring an action in any court of competent jurisdiction, which may include the City Court of New Haven (as may be provided by an inter-local agreement between the City of New Haven and the City of Woodburn) to collect the amount of the bill plus any additional costs incurred in the collection, including court costs and reasonable attorney’s fees. If the City obtains a judgment under this Section V(B), the City shall have a lien in the amount of the judgment on any real or personal property of the owner or occupant, as the case may be. The suit may also request penalties as provided for in Section IX. The City may also request an injunction against the offender seeking an injunction to prohibit such activity and to comply with the provisions of this Ordinance.

**SECTION VI – JUNK VEHICLES**

1. The Council finds that Junk Vehicles are a Public Nuisance because of the danger to health from vermin and to children attracted by such vehicles.
2. Any member of the Department may order any Junk Vehicle removed upon ten (10) days’ notice as provided in this Section VI.

C. Notice of such order shall be placed on the Junk Vehicle. Copies of such notice shall be served on any adult occupying the real estate on which the Junk Vehicle is located and on the owner of the Junk Vehicle, if known. If no occupant of the real estate or owner of the Junk Vehicle can be found, a notice affixed to any building on the real estate shall constitute notice to the owner and occupant of the real estate and to the owner of the Junk Vehicle. If there is no building on the real estate, the notice shall be affixed elsewhere on the real estate.

D. If the Junk Vehicle is not removed within the time fixed by the Order, the Department may cause the Motor Vehicle to be removed at the expense of the owner of the real estate, which expense shall constitute a lien on the vehicle and otherwise be collectable under the terms set forth in Section V of this Ordinance.

**SECTION VII -- ABANDONED VEHICLES**

1. The Council finds that abandoned vehicles are a Public Nuisance and a safety and health hazard. The Department is given the responsibility for removal, storage, and disposal of abandoned vehicles in accordance with Indiana law.
2. The City shall follow the provisions of IC 9-22-1 *et seq.* in enforcing this Ordinance against Abandoned Vehicles.

**SECTION VIII – NOISE CONTROL**

1. This Section shall apply to the control of all noise within the City limits, as they exist now or may hereafter be established.
2. The following acts, uses or noises, among others, subject to specific exemptions, are declared to be loud, raucous or disturbing noises in violation of this Section. Such enumeration shall not be deemed to be exclusive:
3. Using, operating or permitting to be played, used or operated any machine or device for the producing of sound (including, but not limited to, loud music) in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the person who is in the room, vehicle or property in which such machine or device is operated and who is a voluntary listener.
4. Using, operating, or permitting the use or operation of any machine, instrument or device capable of producing or reproducing of sound which is cast upon other properties including the public right-of-way for the purposes of commercial advertising or to attract attention to any activity, performance, sale, place or structure.
5. Using, operating or permitting the use or operation of any machine, instrument or device capable of producing or reproducing any sound on any public transportation vehicle.
6. Using, operating or permitting to be played, used or operated any machine or device for the producing or reproducing of sound on any public right-of-way adjacent to any school, institution of higher learning, church or court while the same are in use, or adjacent to any hospital which unreasonably interferes with the working of such institution, or which unduly disturbs the patients in the hospital.
7. No person shall play, use, operate or permit to be played, used or operated, any machine or device for the producing or reproducing of sound, if it is located in or on any of the following:
8. Any public property, including any public right-of-way, highway, building, sidewalk, park or thoroughfare, if the sound generated is audible at a distance of fifty (50) feet from its source;
9. Any Motor Vehicle on a public right-of-way, highway, or public space if the sound generated is audible at a distance of fifty (50) feet from the device producing the sound.
10. The following acts are declared to be a Public Nuisance, but the enumeration of the particular offenses hereinafter particularly defined shall not be construed as limiting the generality of this Section, or limiting the offense hereunder to the particular offense hereinafter enumerated:
11. The continuous or repeated sounding of any horn or signal device of a Motor Vehicle when not used as a danger signal. Continuous shall be defined to include unnecessary or unreasonable periods of time.
12. The use of any Motor Vehicle with appurtenances attached thereto so as to create loud or unnecessary grating, grinding, rattling or other noise.
13. The use of any Motor Vehicle with or without the attachment of various appurtenances thereto so as to create loud or unnecessary grating, grinding, rattling, or other noise or noises. This shall include the use of any vehicle said use of which causes excessive noise as a result of a defective or modified exhaust system, or as a result of unnecessary rapid acceleration, decelerations, revving the engine, or tire squeal.
14. The following shall be exempted from the provisions of this Section:
15. Sound emitted from sirens of authorized emergency vehicles.
16. Farm tractors, garden tractors, and similar home power tools when properly muffled, between the hours of 7:00 a.m. and 9:00 p.m.
17. Burglar alarms or other warning devices when properly installed on publicly or privately owned property, providing the cause for such alarm warning device sound is investigated and turned off within a reasonable period of time.
18. Otherwise lawful celebrations on legal holidays.
19. Permitted parades or public festivals, between the hours of 8:00 a.m. and 12:00 midnight, Sunday through Thursday; and between 8:00 a.m. and 1:00 a.m., Friday through Sunday.
20. Attendant noise connected with the actual performance of athletic or sporting events and practices related to them.
21. The emission of sound for the purpose of alerting persons to the existence of an emergency, or for the performance of emergency work.
22. Sounds associated with normal conduction of a legally established non-transient business when such sounds are customary, incidental and within the normal range appropriate for such use.
23. In the case of Motor Vehicles, where the noise is the result of a defective or modified exhaust system, if the cause is repaired or otherwise remedied within ten (10) calendar days.

**SECTION IX – PENALTIES**

1. In addition to pursuing collection through a court of competent jurisdiction as provided in Section V, an action may be brought concurrently or separately against an owner or occupant who has or is in violation of this Ordinance. Violations of Sections II, VI & VII of this Ordinance shall subject the owner or occupant, upon conviction thereof, to a penalty of Fifty Dollars ($50) per day. Violations of Section VIII of this Ordinance shall subject the owner or occupant, upon conviction thereof, to a penalty of One Hundred Dollars ($100) per day. Each violation of this Ordinance after the time fixed in the order issued to the owner or occupant, as the case may be, shall constitute a separate offense. The City shall also be entitled to collect its costs and reasonable attorney’s fees in pursuing such action.
2. The penalties provided in this Section shall be due and owing to the City of Woodburn in addition to any damages, costs or attorney fees which may be found owing to the City of Woodburn or any other person in any civil litigation related to any Public Nuisance or other violation described in this Ordinance.

**SECTION X – JUDICIAL REVIEW**

1. Any action taken under this Ordinance is subject to review by the circuit or superior court of Allen County, upon a verified petition filed by: (1) any person who has a substantial property interest in the property that is subject of the notice or order issued under this Ordinance; or (2) to any person to whom such a notice or order was issued.

**SECTION XI -- 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 XII** ‑ **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. This Ordinance shall replace entirely Ordinance No.\_\_\_\_G-13-1305\_\_\_\_.

**SECTION XIII ‑ PASSAGE**

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

Ayes: \_\_\_\_\_\_\_\_\_\_\_\_

Nays: \_\_\_\_\_\_\_\_\_\_\_\_

Abstentions: \_\_\_\_\_\_\_\_\_\_\_\_

Adopted and Ordained this \_\_18th\_\_\_ day of \_\_\_\_\_\_\_July\_\_\_\_\_\_\_\_\_\_\_, 2016.

COMMON COUNCIL OF THE CITY

OF WOODBURN, INDIANA

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Daniel Watts, Councilman

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Dean Gerig, Councilman

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John Renner, Councilman

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Mike Voirol, Councilman

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Michael Martin, Councilman

ATTEST:

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Timothy Cummins, Clerk-Treasurer

The foregoing Ordinance passed by the Council is signed and ( ) approved ( ) not approved by me on the date heretofore mentioned.

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Joseph Kelsey

Mayor of the City of Woodburn

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