

**RESTATEMENT OF AND AMENDED ELKHART COUNTY  
PUBLIC NUISANCE ORDINANCE**

WHEREAS, Indiana Code § 36-1-3-1 et seq. permits any unit in the State of Indiana to exercise any power or to perform any function necessary to the public interest in the context of its governmental or internal affairs, which is not prohibited by the Constitution of the United States or of the State of Indiana, or denied or pre-empted by any other law, or is not expressly granted by any other law to another governmental entity;

WHEREAS, the Board of Commissioners of the County of Elkhart, Indiana is the County executive and legislative body and is by law authorized to adopt ordinances for the protection of the public health, safety, and general welfare of its residents;

WHEREAS, Public Nuisances, when allowed to exist unregulated in unincorporated areas of Elkhart County are unsightly, detrimental to property values, and a hazard to health and safety;

WHEREAS, the purpose of this Ordinance is to regulate and prohibit and require the abatement and/or removal of Public Nuisances on all parcels of real estate in unincorporated areas of Elkhart County;

WHEREAS, this Ordinance is a restatement and revision of Elkhart County Ordinance No. 89-1401;

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the County of Elkhart, Indiana, as follows:

Section 1. Title

This Ordinance and all ordinances supplemental or amendatory thereto shall be known as the "Elkhart County Public Nuisance Ordinance" (hereinafter this "Ordinance").

Section 2. Definitions

A. "County" shall mean and refer to the County of Elkhart, State of Indiana.

B. "Department" shall mean and refer to the Elkhart County Planning and Development Department.

C. "Duly Authorized Representatives" shall mean and refer to all employees of the Elkhart County Planning and Development Department holding positions identified within the budget classifications for the Planning Division and Code Enforcement Division of the annual budget as approved and as amended by the Elkhart County Council from time to time.

D. "Public Nuisance" shall mean any condition or action that is injurious to health, indecent, 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, as well as other conditions or actions that are otherwise known to the common law or to the statutes of the State of Indiana as a nuisance, and shall include but is not limited to the following:

- 1 litter;
- 2 boxes, appliances, furniture, household items, and items of a similar nature which have accumulated outside a storage structure; said nuisances do not include machinery, stock or inventory used in conducting agricultural activities in a properly zoned area;
- 3 demolition remains;
- 4 accumulated garbage or trash;
- 5 automobile parts, used tires, or scrap metal;
- 6 structures defaced with paint or graffiti;
- 7 any waste water, filth, offal, garbage, rubbish, or human excrement, which is deposited, allowed or caused to be upon any public or private property;
- 8 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;
- 9 any dead domestic or wild animal;
- 10 any real or personal property which is infected with contagious disease or on which a condition exists that is likely to cause an immediate health hazard;
- 11 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, unsanitary, or dangerous condition;
- 12 trees, shrubbery, weeds, or other matter obstructing public ways, or causing visual barriers which create vehicular traffic or pedestrian safety hazards; or
- 13 the unauthorized placement of fences, signs, shrubbery or barriers within the county road right of ways.

E. "Public Nuisance Premises" shall mean the tract of real property on which a Public Nuisance is located.

F. "Substantial Property Interest" as used in this Ordinance shall mean any right in real property that may be affected in a substantial way by actions authorized by this Ordinance, including a fee interest, a life estate interest, a future interest, a mortgage interest, or an

equitable interest of a contract purchaser, or shall otherwise refer to the definition of "substantial property interest" as set forth in Indiana Code 36-7-9-2, as amended or replaced from time to time, which is hereby incorporated by reference and made a part of this Ordinance.

G. "Zoning Administrator" shall mean and refer to the Elkhart County Zoning Administrator and his or her Duly Authorized Representatives.

### Section 3. Administration and Enforcement

The Department shall be the executive department that is authorized to administer the terms and provisions of this Ordinance. The Zoning Administrator shall enforce the terms and provisions of this Ordinance. The Department and the Zoning Administrator are hereby granted all powers reasonable and necessary for the performance of their responsibilities under this Ordinance.

### Section 4. Enforcement Discretion

The Department shall have all rights and authorities as are provided under Indiana law as the executive department authorized to administer and enforce this Ordinance. It is hereby acknowledged, understood, and declared by the Board of Commissioners of Elkhart County, Indiana that the Zoning Administrator is required to exercise and is vested with the authority to exercise his or her discretion and judgment in order to protect and preserve the public health, safety, and general welfare of the citizens of Elkhart County, Indiana in administering and enforcing this Ordinance. The authority of the Zoning Administrator to issue or revoke, or fail or refuse to issue or revoke any notice, approval, order, or similar action under this Ordinance is hereby declared to be discretionary.

### Section 5. Required Action

It is a violation of this Ordinance to have, maintain, or allow a Public Nuisance on any parcel of real estate in an unincorporated area of the County. All owners of parcels of real estate in unincorporated areas of the County are hereby required to abate and/or remove from such real estate all Public Nuisances created or existing thereon. If the Zoning Administrator determines after an inspection that a Public Nuisance exists, the Zoning Administrator may take action in accordance with the procedures set forth in this Ordinance to abate or remove such Public Nuisance.

### Section 6. Order to Abate

The Zoning Administrator may issue an order requiring action relative to any Public Nuisance, including the abatement and/or removal of the Public Nuisance in and about the Public Nuisance Premises. The ordered action must be reasonably related to the condition

constituting the Public Nuisance. Notice of the order must be given in accordance with Section 9 of this Ordinance. The order must contain:

- A. the name of the person to whom the order is issued;
- B. the legal description or address of the Public Nuisance premises that is the subject of the order;
- C. the action the order requires;
- D. the period of time in which the action is required to be accomplished;
- E. a statement briefly indicating what action can be taken by the Department if the order is not complied with;
- F. a statement, indicating the obligation created by Section 10 of this Ordinance relating to notification of subsequent interest holders and the enforcement authority; and
- G. the name, address and telephone number of the Zoning Administrator.

The order must allow at least ten (10) days from the time when notice of the order is given to accomplish the required action. The order expires two (2) years from the day the notice of the order is given.

The Zoning Administrator may issue an order that modifies an order previously issued, or the Zoning Administrator may rescind an order previously issued, all within the discretion of the Zoning Administrator.

#### Section 7. Enforcement

In the event that the owner of a Public Nuisance Premises fails to perform the action required by an order issued under Section 6 of this Ordinance, the Zoning Administrator may file a civil action in a court of competent jurisdiction to enjoin or abate the condition or action causing the Public Nuisance, and in such civil action may seek damages caused by such Public Nuisance. The Zoning Administrator may also seek an order from the court allowing the Department or other County personnel, or a private contractor hired by the Department, to perform work reasonably necessary to abate or remove the condition or action causing the Public Nuisance. Damages that the Zoning Administrator may seek to collect in the civil action shall include reimbursement for all costs incurred by the County to abate or remove a Public Nuisance including:

- A. The actual cost of the work performed by the Department or other County personnel, or a private contractor hired by the Department, reasonable charges for the

equipment used, repair costs for damage to equipment used, mileage costs incurred in driving to and from the subject property, disposal costs, and other related expenses, and/or the bid price of work accomplished by a contractor hired by the Department to perform work under court order; and

B. Administrative costs incurred by the Department in abating or removing a Public Nuisance, including compensation for the time of the Zoning Administrator and Duly Authorized Representatives spent in enforcing this Ordinance, costs of sending notice under Section 6 of this Ordinance, postage charges, charges for office supplies incurred by the Director, reasonable attorney fees and court costs, and other related charges.

All monies shall be made payable to and shall be deposited in the County Public Nuisance Fund. The County Public Nuisance Fund is established and perpetuated in the County operating budget.

#### Section 8. Inspection Warrants

If the owners or those in possession of a parcel of real estate in an unincorporated area of the County refuse inspection, the Zoning Administrator may obtain an inspection warrant from any court of record in the County in order to determine if there is a Public Nuisance existing on the premises. The court shall issue the warrant subject to the following conditions:

A. The person seeking the warrant must establish that the premises to be searched or inspected is to be searched or inspected as part of a legally authorized program of inspection that naturally includes the premises, or that there is probable cause for belief that a condition, object, activity, or circumstance legally justifies a search or inspection of that premises.

B. An affidavit establishing one (1) of the grounds described in subsection 2(D) must be signed under oath or affirmation by the affiant.

C. The Court must examine the affiant under oath or affirmation to verify the accuracy of the affidavit.

The warrant is valid only if it:

A. is signed by the judge or the court and bears the date and hour of its issuance above that signature, with a notation that the warrant is valid for only forty-eight (48) hours after its issuance;

B. describes (either directly or by reference to the affidavit) the premises where the search or inspection is to occur so that the executor of the warrant and owner or the possessor of the premises can reasonably determine what premises the warrant authorizes an inspection of;

C. indicates the conditions, objects, activities, or circumstances that the inspection is intended to check or reveal; and

D. is attached to the affidavit required to be made in order to obtain the warrant.

A warrant issued under this Section 8 is valid for only forty-eight (48) hours after its issuance, must be personally served upon the owners or possessors of the premises, and must be returned within seventy-two (72) hours.

#### Section 9. Notice

Notice of Orders to Abate shall be adequate if given to the landowner of the property in person or sent by Certified U.S. mail, return receipt requested, postage prepaid, to the landowner at the address as listed on the real estate records of the Elkhart County Auditor's office, or as otherwise provided in I.C. 1-1-7-1 or I.C. 36-7-10.1, as amended or replaced from time to time, which is hereby incorporated by reference and made a part of this Ordinance, or other applicable Indiana law. Date of service shall be the date of delivery if given in person or the date of mailing if given by Certified U.S. mail, postage prepaid.

#### Section 10. Transfers of Property

A person who has been issued and has received notice of an order relative to a Public Nuisance and has not complied with that order:

A. must supply full information regarding the order to a person who takes or agrees to take a Substantial Property Interest in the Public Nuisance premises before transferring or agreeing to transfer that interest; and

B. must, within five (5) days after transferring or agreeing to transfer a Substantial Property Interest in the Public Nuisance premises, supply the Zoning Administrator with written copies of:

1 the full name, address, and telephone number of the person taking a Substantial Property Interest in the Public Nuisance premises; and

2 the legal instrument under which the transfer or agreement to transfer the Substantial Property Interest is accomplished.

If a judgment is obtained against the Department, Zoning Administrator, or other governmental entity for the failure of that entity to provide notice to persons holding an interest in the Public Nuisance premises in an action taken by the entity under this Ordinance, a person who failed to comply with this Section 10 is liable to the entity for the amount of the judgment if it can be shown that the entity's failure to give notice was a result of that person's failure to comply with the requirements of this Section 10.

## Section 11 Penalty Provisions

A. Fines. Any person found to be in violation of this Ordinance shall be guilty of an ordinance violation and shall be subject to a civil penalty of up to Two Thousand Five Hundred Dollars (\$2,500.00) for each violation. Each day that a violation continues shall constitute a separate violation. Any failure to comply with any of the terms and provisions of this Ordinance shall constitute a violation. The assessment of a civil penalty shall in no way limit the operation of any other enforcement remedies provided elsewhere in this Ordinance.

B. Expenses. The Department may recover reasonable attorney fees, court costs, and other expenses associated with the enforcement of this Ordinance from any person found to be in violation of this Ordinance.

C. Agreed Order. The Zoning Administrator, in the name of the Department, may enter into an agreed order which order may include the payment of a civil penalty and other expenses associated with the enforcement of this Ordinance by the Department.

D. Suit for Civil Penalties. The Zoning Administrator, in the name of the Department, may file a complaint in a court of competent jurisdiction within Elkhart County seeking a judicial determination that this Ordinance has been violated and requesting the imposition of civil penalties.

E. Enforcement of Agreed Order. The Zoning Administrator, in the name of the Department, may file a complaint in a court of competent jurisdiction within Elkhart County seeking to enforce the terms of an agreed order.

F. Other Action. Nothing contained herein shall prevent the Department or Zoning Administrator from taking any other lawful action as is necessary to prevent or remedy any violation of this Ordinance.

## Section 12. Construction and Effective Date

All ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed upon the effectiveness of this Ordinance.

In the event that any provision of this Ordinance is determined by a court of competent jurisdiction to be pre-empted by a state or federal law or regulation, the applicable provision shall automatically be deemed amended by eliminating the pre-empted provision and incorporating in its place the applicable provision of the pre-empting state or federal law or regulation.

Each provision of this Ordinance shall be construed as separate. If any term or provision of this Ordinance is determined to be invalid or unenforceable by a court of competent jurisdiction, the remaining terms and provisions of this Ordinance shall continue in full force and effect.

The expressed repeal by this Ordinance and any implied repeal by this Ordinance of any other ordinance or part of any other ordinance does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this Ordinance. These rights, liabilities, and other proceedings are continued and penalties shall be imposed and enforced under the repealed ordinance as if this Ordinance had not been adopted.

This Ordinance shall be in full force and effect from and after its passage and adoption by the Board of Commissioners of Elkhart County, Indiana and publication in accordance with the requirements of Indiana law.

ORDAINED AND ADOPTED this 6 day of May, 2013.

BOARD OF COMMISSIONERS OF THE  
COUNTY OF ELKHART, INDIANA

By: Terry Rodino  
Terry Rodino, President

By: Mike Yoder  
Mike Yoder, Vice President

By: Frank Lucchese  
Frank Lucchese, Member

ATTEST:

Pauline Graff  
Pauline Graff, Auditor