

**COMMON COUNCIL
CITY OF SOUTHPORT, 6901 DERBYSHIRE ROAD
SOUTHPORT, INDIANA 46227**

**AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF SOUTHPORT, INDIANA,
REGARDING WEEDS AND RANK VEGETATION ON REAL PROPERTY**

ORDINANCE NO. 16-10-07

WHEREAS, Ind. Code § 36-7-10.1-3 authorizes the legislative body of a municipality to require, by ordinance, that owners of real property within the municipality cut and remove weeds and other rank vegetation from their property;

WHEREAS, the Common Council (“Common Council”) is the legislative body for the City of Southport, IN (“City”) and is the proper body to pass the ordinance;

WHEREAS, the Code of Ordinances for the City currently contains inconsistent provisions regarding the maintenance of real property, and in particular, regulations mandating the removal of weeds and rank vegetation; and

WHEREAS, the Common Council desires to revise the Code of Ordinances regarding the maintenance of real property, and in particular, the regulation of weeds and rank vegetation by adding, deleting, and amending certain sections of the Code.

NOW THEREFORE, BE IT ORDAINED by the Common Council that Chapter 9.12 of Title 9, General Regulations, of the City of Southport Code of Ordinances is hereby deleted in its entirety, and replaced with the following new Chapter 9.12:

CHAPTER 9.12: REMOVAL OF WEEDS AND RANK VEGETATION; TREE TRIMMING.

9.12.010 DEFINITIONS; EXCLUSIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

NOTICE OF VIOLATION. The notice served by the enforcement authority on the owner of the property where the violation exists.

ENFORCEMENT AUTHORITY. The Board of Public Works and Safety.

PROPERTY OWNER. The holder of legal title of the real property as indicated in the records of the county auditor on the date of notice of violation.

WEEDS AND RANK VEGETATION. The uncontrolled or uncultivated growth of grasses, weeds, or other vegetation that exceeds a height of ten (10) inches. This definition shall not include shrubs, trees, cultivated plants, or agricultural crops such as hay and pasture. The Indiana Cooperative Extension

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Service shall be the referenced technical authority for the enforcement authority with respect to exempt vegetation, including shrubs, trees, cultivated plants and crops.

9.12.020 REMOVAL AND CUTTING OF WEEDS AND RANK VEGETATION.

All property owners within the corporate limits of the City shall be responsible for the removal and cutting of weeds and rank vegetation or other uncontrolled plant growth on their property that is in excess of ten (10) inches in height, as measured from the ground.

9.12.030 TRIMMING OF TREES.

All property owners with property that fronts any public street of the City shall trim and keep trimmed all trees upon property that overhang any street or sidewalk and all trees standing within the limits of such highway in front of such property, so that no limbs or branches of such trees shall extend lower than fifteen (15) feet above the roadway or lower than eight (8) feet above any such sidewalk.

9.12.040 NOTICE OF VIOLATIONS.

Upon receiving notice of the probable existence of weeds, rank vegetation or other uncontrolled plant growth, or untrimmed tree branches or limbs, in violation of this chapter, the person designated by the enforcement authority shall make an inspection and prepare a written report to the enforcement authority regarding the condition. The enforcement authority, upon concluding that there is a probable belief that this chapter has been violated, shall forward written notification in the form of a Notice of Violation to the owner of record of the real property. Such notice shall be served in writing by certified mail or first class mail or an equivalent service permitted under Ind. Code § 1-1-7-1. The notice shall provide that within five (5) calendar days after the mailing of the notice, the designated violation shall be removed from the property or the owner must file an appeal.

9.12.050 ABATEMENT BY CITY.

(A) In the event that the property owner fails to comply with the Notice of Violation or file a notice of appeal within five (5) calendar days of the mailing of the notice, the enforcement authority may employ the services of City employees or outside contractors to remove the weeds, grasses, or rank vegetation, or trim any tree limbs or branches in violation, to conform to this chapter by all lawful means.

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(B) At the time of abatement by the City, a continuous abatement notice may be posted at the property, serving notice to the owner that each subsequent violation during the same year for which the initial notice of violation was provided may be abated by City employees or outside contractors. A continuous abatement notice may be posted in lieu of sending additional notices by certified mail.

9.12.060 FINES AND COSTS OF ABATEMENT.

(A) Any violation of this chapter that goes unresolved in excess of five (5) days from the date notice is mailed shall result in a fine of \$75.00 per day, starting with day six (6), with each subsequent day of noncompliance considered a separate violation. In cases where a continuous abatement notice was previously posted on the property, each additional day of noncompliance after the abatement, beginning with day one (1), is considered a separate violation and shall result in a fine of \$75.00 per day.

(B) In addition to fines, the property owner is responsible for all costs incurred by the City for the abatement of the violation, including the costs of removal, cutting or destruction of weeds and rank vegetation as defined by this chapter, or the costs of trimming tree limbs or branches, as well as administrative costs, including, but not limited to, court costs, attorney's fees and the costs of sending or posting notices of violations. If the enforcement authority uses municipal employees to perform the abatement, the City shall set and assign an appropriate per hour rate for employees, equipment, supplies and chemicals that may be used.

(C) The City shall issue a bill for the both the fines under subsection (A) as well as the costs of abatement under subsection (B) to the owner or owners(s) of record of the real property to whom the original Notice of Violation was delivered.

(D) All sums payable by the property owner are to be paid to the City Clerk-Treasurer and deposited in the general fund, as compensation for expenses and costs incurred by the City. The property owner must pay the bill within fourteen (14) days of the mailing of notice, or file an appeal within five (5) days of the mailing of the notice.

(E) If the property owner fails to pay a bill issued under this chapter within fourteen (14) days and has not filed an appeal, the City shall certify to the county auditor the amount specified in the bill, plus any administrative costs incurred in the certification. The auditor shall place the total amount certified on

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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 general fund of the City.

(F) The City may also, at its discretion, bring an action in the Beech Grove City Court 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 subsection, the City may obtain a lien in the amount of the judgment on any real or personal property of the owner of record.

9.12.070 APPEALS.

(A) If the property owner contests the findings of the enforcement authority in the Notice of Violation, the property owner has five (5) days from the mailing of the Notice of Violation to file a written notice of appeal with the City Clerk-Treasurer. The appeal shall be brought before the Board of Public Works & Safety and shall be decided by a majority vote of the Board members in attendance at a regularly scheduled or special meeting of the Board. It shall be the property owner's burden to demonstrate that the vegetation in question does not violate this chapter and should not be subject to cutting or destruction. If the appeal is denied, the property owner has twenty-four (24) hours to comply with the Notice of Violation or face fines and costs of abatement.

(B) If the property owner contests the amount of a bill issued under subchapter 9.12.060, the property owner has five (5) days from the mailing of the bill to file a written notice of appeal with the City Clerk-Treasurer. The appeal shall be brought before the Board of Public Works & Safety and shall be decided by a majority vote of the Board members in attendance at a regularly scheduled or special meeting of the Board. The appeal shall only concern the amount of the bill and may not question the findings of the enforcement authority in the Notice of Violation. If the appeal is denied, the property owner has twenty-four (24) hours to pay the bill before the City may take steps to collect amount as provided under subchapter 9.12.060(E) and (F).

(C) In any proceeding before the Board under subsections (A) or (B), the City shall be entitled to recover reasonable attorney's fees and costs if it is the prevailing party.

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FURTHER ORDAINED, that Chapter 9.20 of Title 9, General Regulations, of the City of Southport Code of Ordinances is amended by the deletion of the language that is stricken-through, and by the addition of the language that is underscored, to read as follows:

CHAPTER 9.20: LITTERING

9.20.030 RESPONSIBILITY OF OWNER.

No real property owner shall permit his or her real property to become unsightly, unclean, unsanitary, unsafe or dangerous to the general public, nor shall the property owner allow houses, buildings or other structures on the property to remain in a state of disrepair. Violations of this section include, but are not limited to ~~allowing~~ accumulation of litter or waste, ~~accumulation or storage of~~ the presence of unsightly or offensive personal property such as furniture, mattresses, or household appliances, and the presence of old, abandoned or partially dismantled automobiles. Litter, waste, and personal property may not be placed outside for trash pick-up more than five (5) days prior to the scheduled pick-up. ~~allowing~~ unchecked growth of grass, weeds or other vegetation or allowing houses, buildings or other structures to remain in a state of disrepair.

9.20.040 ORDER TO OWNER TO CORRECT.

The Board of Public Works & Safety may order the real property owners to correct conditions ~~which~~ that violate §§ 9.20.010 through 9.20.030. If the real property owner fails to comply with such order within ten working-days of the notice or within the time prescribed, the Board may have the conditions corrected and place on the owner's real property a lien for the cost of correction in accordance with the statutory procedure ~~provided for weed-cutting in the city~~ and such owner shall also be liable for the fine hereinafter prescribed.

FURTHER ORDAINED, that Chapter 12.04 of Title 12, General Offenses, of the City of Southport Code of Ordinances is amended by the deletion of the language that is stricken-through, and by the addition of the language that is underscored, to read as follows:

CHAPTER 12.04: GENERAL OFFENSES

12.04.020 MAINTENANCE OF PROPERTY.

(A) ~~The Common Council~~ Board of Public Works & Safety shall give five-days' written notice to the owner of any building within the limits of the City by them deemed dangerous from decay, in want of repairs,

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or any other cause, to alter, repair or remove the same, setting forth briefly in such notice the particular repairs, alterations or removal to be made, and if such owner be a nonresident of the city, such notice shall be published in a newspaper, printed in the English language in Marion County on two occasions not less than ten days apart; and if after such notice has been given as aforesaid, such owner shall fail, neglect or refuse to comply therewith with reasonable dispatch, the Board of Public Works & Safety ~~the Common Council~~, at the expense of the city, make or cause to be made such repairs, alterations or removal, and such owner shall thereupon become liable to the city for all the costs and expenses of said work, which shall be recovered at the suit of the city, together with costs and reasonable attorneys' fees in any court of competent jurisdiction.

(B) Whenever any wall or other part of a burned or otherwise damaged building is unsafe or a menace to the safety of persons passing along or near the same, it shall be the duty of the owner, agent or occupant thereof to remove the same within ten days of the service of notice by the Building Commissioner to do so, and the failure of any such owner, agent or occupant to comply with the provisions of the section after such notice shall constitute a separate violation hereof for each and every day such violation continues.

(C) It shall be unlawful for any person to throw or deposit ashes, offal, dirt, garbage, paper, any liquids or any unwholesome material into any street, alley or public place of this city.

(D) It shall be unlawful for any person to burn within the limits of this city any leaves, paper, rags or other substance in the open air except between the hours of 10:00 a.m. and 4:00 p.m.

(E) It shall be unlawful for any person to establish or maintain a dump in the city for the purpose of disposing of garbage, carcasses of animals, tin cans, ashes, glass bottles or any other waste or unwholesome material.

~~(F) Every owner or occupant of real estate within the limits of the city shall, within the months of June, July, August, September and October of each and every year, thoroughly cut down any and all thistles, weeds, and grass and prevent the same from going to seed within the limits of the streets and highways adjacent to the real estate owned or occupied by him or her and they shall likewise cut down and~~

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prevent the same from going to seed any and all thistles and weeds upon the real estate owned or occupied by them.

~~(G) If any owner or agent of any real estate situated in the city shall fail, refuse or neglect to cut or cause to be cut all weeds growing upon such real estate, on or before the first day of August, of every year, while this chapter is in effect, it shall be the duty of the Clerk of the Board to mail to such owner or agent, if the addresses of such owner or agent be known, or if the address be unknown to the Clerk, to cause to be posted upon said premises at least ten days before further action of the Board a notice ordering said owner or agent to cause said weeds to be cut within said period.~~

~~(H) All owners and occupants of property fronting upon any public street of the city shall trim and keep trimmed all trees upon such property which overhang any street or sidewalk and all trees standing within the limits of such highway in front of such property so that no limbs or branches of such trees shall extend lower than 15 feet above the roadway or lower than eight feet above any such sidewalk. Upon failure, refusal or neglect of the owner or occupant of any such property to comply with the requirements of this section within five days after being notified to do so by the Chief of Police of the city, such Chief of Police shall do or cause to be done the work required hereunder and shall forthwith collect the cost thereof from the owner or occupant of such property by suit in any court of competent jurisdiction, together with costs and attorneys' fees, which action shall be brought in his or her own name.~~

FURTHER ORDAINED, THAT Section 12.01.060 of Chapter 12.04 of Title 12, General Offenses, of the City of Southport Code of Ordinances is hereby deleted in its entirety.

FURTHER ORDAINED, that this Ordinance shall be in full force and effect from and after its passage, signature by the Mayor, and publication in accordance with the laws of the State of Indiana.

ADOPTED this ____ day of _____, 2016.

CITY OF SOUTHPORT COUNCIL MEMBERS

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NAY

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James A. Cooney

James A. Cooney

Kenny Winslow

Kenny Winslow

Joseph E. Haley, Jr.

Joseph E. Haley, Jr.

Larry L. Tunget

Larry L. Tunget

Shara Hostetler

Shara Hostetler

ATTEST:

Diana S. Bossingham, Clerk-Treasurer

Presented by me to the Mayor of the City of Southport, Indiana, on the ____ day of _____,
2016, at __:___ __m.

Diana S. Bossingham, Clerk-Treasurer

This Resolution approved and signed by me on the ____ day of _____, 2016.

Russell McClure, Mayor